

**RAILROAD AND HAZARDOUS MATERIALS  
TRANSPORTATION PROGRAMS: REFORMS  
AND IMPROVEMENTS TO REDUCE  
REGULATORY BURDENS**

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**(112-23)**

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
RAILROADS, PIPELINES, AND  
HAZARDOUS MATERIALS  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION

APRIL 7, 2011

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**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**John L. Mica**  
**Chairman**

**Mark J. Rahall, Jr.**  
**Ranking Member**

James W. Coon II, Chief of Staff

April 1, 2011

James H. Zola, Democrat Chief of Staff

**SUMMARY OF SUBJECT MATTER**

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

SUBJECT: Hearing on "Railroad and Hazardous Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens"

**PURPOSE OF HEARING**

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, April 7, 2011 at 9:00 a.m. in 2167 Rayburn House Office Building to receive testimony from rail stakeholders regarding legislative priorities for changes or reforms to current law rail authorizations and administrative regulatory policies, particularly in the areas of intercity passenger rail, high-speed rail, rail safety, and rail financing. Additionally, the Subcommittee will receive testimony from hazardous materials transportation stakeholders regarding legislative priorities for reauthorization of the hazardous materials transportation safety programs at the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation. The current authorization for these programs, the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, expired on September 30, 2008.

**INVITED WITNESSES**

The Honorable Christopher A. Hart  
Vice Chairman  
National Transportation Safety Board

The Honorable Joseph Boardman (or his designee)  
President  
Amtrak

Edward R. Hamberger  
President and CEO  
Association of American Railroads

Richard F. Timmons  
President  
American Short Line and Regional Railroads Association

William Millar  
President  
American Public Transportation Association

Thomas Hart  
Vice President, Government Affairs and General Counsel  
U.S. High Speed Rail Association

Ray Chambers  
Executive Director  
Association of Independent Passenger Rail Operators

Eric Madden  
Deputy Secretary for Aviation, Rail Freight, Ports and Waterways  
Pennsylvania Department of Transportation

Thomas D. Simpson  
President  
Railway Supply Institute

Scott N. Paul  
Executive Director  
Alliance for American Manufacturing

Helen M. Sramek  
President  
Operation Lifesaver, Inc.

James A. Stem, Jr.  
National Legislative Director  
United Transportation Union

John Tolman  
Vice President and National Legislative Representative  
Brotherhood of Locomotive Engineers and Trainmen

Leonard Parker  
National Legislative Director  
Brotherhood of Railroad Signalmen



Freddie Simpson  
National Division President  
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Gary Self  
Vice President & General Manager  
Nelson Brothers, Inc.  
Representing the Institute of Makers of Explosives

John Conley  
President  
National Tank Truck Carriers

Cal Dooley (or his designee)  
President and CEO  
American Chemistry Council

Kevin O'Connor  
Assistant to the General President  
International Association of Firefighters



**RAILROAD AND HAZARDOUS MATERIALS  
TRANSPORTATION PROGRAMS: REFORMS  
AND IMPROVEMENTS TO REDUCE  
REGULATORY BURDENS**

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**THURSDAY, APRIL 7, 2011**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON RAILROADS, PIPELINES  
AND HAZARDOUS MATERIALS,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:07 a.m. in Room 2167, Rayburn House Office Building, Hon. Bill Shuster (Chairman of the subcommittee) presiding.

Mr. SHUSTER. The hearing will come to order. I thank everybody for being here this morning. I apologize for being tardy. I would blame it on the traffic, but really I have to blame it on myself. I did not plan to deal with the traffic, so I should have got up earlier and put more time out there to make sure I could get around town. But we are here, and again I want to thank everybody for being here this morning.

We are going to do a transportation bill here in the coming months, and we wanted to have an opportunity for stakeholders to be able to have one last shot at telling us what they think we should be doing. So we are going to get everybody on record today.

We have got 19 witnesses today. They tell me that Jimmy Duncan did the same amount of witnesses in 2 hours. So if those of you in the room believe that rail is more efficient, we are going to do it in less time than Jimmy Duncan did it in his highways hearing. Four minutes per witness, I am going to be brutal with the gavel. I will probably start tapping when the yellow light comes on, just to remind you that your time is going to end.

But again, we are looking forward to hearing from everybody here today. John Mica and myself and others on the committee crisscrossed the country, listening to folks to hear across this country what they wanted to see in a new transportation bill. Our message was very clear, that we are going to have to figure out ways to do more with less. And that is the reality of Washington and this country today.

But I am confident, after traveling the country, that we can do more with less. The States are on board. The stakeholders that we heard from across the country understand that we have to do this. And it is going to be incumbent upon us here in Washington to produce a bill that gets the Federal Government out of the way, or

at least gets them lined up as we move these projects forward to move them forward with speed and to be financially responsible, as we move forward.

I am going to give Members an opportunity—first of all, yield to the Ranking Member, Ms. Brown, for her opening statement.

Ms. BROWN. Thank you, thank you. I want to thank Chairman Shuster for holding today's hearing, allowing all of the stakeholders to express their views on the upcoming bill to reauthorize the Nation's surface transportation program.

I believe wholeheartedly that authorizing a 6-year surface transportation bill with the appropriate funding levels and policy will give the economy just the kind of kick-start it needs.

We are experiencing a renaissance in passenger rail in this country. And if we want to keep up with our international competitors, we need to make a significant investment in passenger and high-speed rail. I have advocated for the support of a dedicated source of funding for rail that would encourage the committee to include a minimum of \$53 billion for high-speed and intercity passenger rail over the life of the bill, and \$53 billion is what the administration had requested. Compared to the funding levels in the overall bill, and the money being spent in other countries on rail, \$53 billion is a drop in the bucket.

Although we have some very small-minded governors, support for high-speed rail is still very high in this country. The FRA received more than 90 applications from 24 States, the District of Columbia, and Amtrak for the \$2.4 billion that Florida turned back. The request was for nearly \$10 billion.

I also believe that this reauthorization offers us an opportunity to improve the Railroad Rehabilitation and Improvement Finance, RRIF, loan program. RRIF can help railroads, shippers, and State meet their rail infrastructure investment needs. But I do not think we are taking full advantage of the program. I met with several railroads and others, and they tell me time and time again how difficult the application process is to navigate, how time consuming, how expensive, how they cannot use studies from one DOT agency to the other. I really do believe this is an area that we can work together to do better.

The draft surface transportation authorization act of 2009 made significant changes in the RRIF program, which I proposed. The bill authorizes the Secretary to reduce the interest to be paid on direct loans provided to railroads, State and local government, and eligibility for the sole purpose of installing positive train control, allowing applicants to use private insurance, including BUN insurance, in lieu of credit risk premiums, allowing applicants to pay the credit risk premium over the life of the loan.

The draft bill also authorized appropriations to the Secretary in reducing the interest rate for loans using—installing PTC. I hope that these provisions will be included in the new bill.

I want to take this time to also express my strong support for Amtrak. Congress has micro-managed and financially starved them for most of their existence. We created Amtrak because the freight rail could not make a profit on passenger service, yet we continue to hammer Amtrak for not making enough money. The Bush ad-

ministration even went so far as to propose zero funding for Amtrak, trying to bankrupt it.

I know that Chairman Mica wants to revisit some issues in the Amtrak bill that was signed into law on 2008. I hope that whatever he proposes, that we can work together and that we do negotiations like we did during the 2008 negotiation of the bill.

Our subcommittee is also making major strides in improving the safety in the railroad industry. We are improving hours of service and training standards, improving the working and living conditions of railroad employees, and implementing several critical NTSB standards, including positive train control, which can save both lives and money.

All of the stakeholders are working very hard together to implement these rules and make adjustments where we needed—we need to do this working together.

Another issue that is critically important to the Gulf States—and really, the entire Nation—is restoration of the Sunset Limited route. This route served my home State of Florida and other States along the Gulf Coast. But sadly, it has been shut down since Hurricane Katrina. The people of the State have been denied the ability to travel by rail, and most important, they have lost the ability to move from harm's way during a disaster. If Amtrak is unwilling to operate the line, then we may very well be a good place for a private company to provide service on this route.

Lastly, I want to encourage the committee to include language that ensures that minorities, veterans, and women-owned businesses are getting their fair share of the transportation pie. Federal transportation spending has historically served as a critical means to empower socially disadvantaged business. Thanks to the effort of the Congressional Black Caucus and a bipartisan group of members of the House Transportation Committee, including former Chairman, Bud Shuster, every major transportation bill since 1983 has mandated minimum levels of participation for minorities or women-owned companies.

Unfortunately, because the Federal Railroad Administration has not historically been a significant grant-making agency, it is not currently authorized to require opportunities for disadvantaged business. I strongly encourage the committee to take steps necessary to provide the FRA with the authority and to develop other programs such as small business set-aside, subcontracting, setting goals, and other avenues that ensure that minorities and disadvantaged businesses have their fair share of Federal funding contracts.

During the hearing process, we heard from witnesses who want to limit the scope of the bill to just build roads. That would be a mistake. We need a comprehensive bill that improves our transportation system for everyone who uses it, whether they are driving, walking, or taking public transportation—public transit. My transportation person is here, Mr. Mike Blalie, who runs my transit system and my roads system. Wave, Mr.—thank you.

The stimulus bill has proven that transportation infrastructure funding provides benefits to the community and puts people back to work. From every billion dollars in infrastructure funding, 32,000 permanent-paid jobs are created. And that is exactly what this country needs.

With that, I want to welcome our panelists, and I am looking forward to the hearing. I yield back the balance of my time.

Mr. SHUSTER. I thank the Ranking Member. If nobody took notice, she is fired up this morning.

[Laughter.]

Mr. SHUSTER. I am glad I am not the governor of Florida.

Thank you for that opening statement. None of the other Members have an opening statement, so we are going to proceed. I trust that Jimmy Miller has explained to you how we are going to do this. After you get done, get up, the next person is going to sit in your seat, and we are going to roll through this. Again, we have got to make sure we do it faster than Jimmy Duncan did it.

But—and if you have a longer statement, it will be in the record. So, as we move forward to write the bill, we will have all your thoughts on paper and in the record.

So again, thank you, everybody, for coming. Remember, 4 minutes.

And we will start with the Honorable Christopher Hart, who is the vice chairman of the National Transportation Safety Board.

So, Mr. Hart, proceed, please.

**TESTIMONY OF HON. CHRISTOPHER A. HART, VICE CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; JOSEPH H. MCHUGH, VICE PRESIDENT, GOVERNMENT AFFAIRS AND CORPORATE COMMUNICATIONS, AMTRAK; EDWARD R. HAMBERGER, PRESIDENT AND CEO, ASSOCIATION OF AMERICAN RAILROADS; RICHARD F. TIMMONS, PRESIDENT, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; WILLIAM MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION; THOMAS A. HART, JR., ESQ., VICE PRESIDENT, GOVERNMENT AFFAIRS AND GENERAL COUNSEL, US HIGH SPEED RAIL ASSOCIATION; RAY B. CHAMBERS, EXECUTIVE DIRECTOR, ASSOCIATION OF INDEPENDENT PASSENGER RAIL OPERATORS; TOBY L. FAUVER, AICP, DEPUTY SECRETARY, LOCAL AND AREA TRANSPORTATION, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; THOMAS D. SIMPSON, PRESIDENT, RAILWAY SUPPLY INSTITUTE, INC.; SCOTT N. PAUL, EXECUTIVE DIRECTOR, ALLIANCE FOR AMERICAN MANUFACTURING; HELEN M. SRAMEK, PRESIDENT, OPERATION LIFESAVER, INC.; JAMES A. STEM, JR., NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION; STEPHEN J. BRUNO, VICE PRESIDENT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN; LEONARD PARKER, NATIONAL LEGISLATIVE DIRECTOR, BROTHERHOOD OF RAILROAD SIGNALMEN; RICK INCLIMA, DIRECTOR OF SAFETY, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION; GARY SELF, VICE PRESIDENT AND GENERAL MANAGER, NELSON BROTHERS, INC., REPRESENTING THE INSTITUTE OF MAKERS OF EXPLOSIVES; JOHN L. CONLEY, PRESIDENT, NATIONAL TANK TRUCK CARRIERS; MARY L. PILEGGI, NORTH AMERICAN LOGISTICS MANAGER, DUPONT, ON BEHALF OF AMERICAN CHEMISTRY COUNCIL; AND KEVIN B. O'CONNOR, ASSISTANT TO THE GENERAL PRESIDENT, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**

Mr. CHRISTOPHER HART. Chairman Shuster, Ranking Member Brown, and members of the subcommittee, thank you for giving the National Transportation Safety Board the opportunity to appear today to discuss improving transportation safety. I am Christopher Hart, Vice Chairman of the NTSB.

My written testimony addresses the safety of several railroad and hazardous materials transportation programs, including positive train control, air transportation of lithium batteries, wet lines on highway cargo tanks, loading and unloading of hazardous materials in railroad tank cars and highway cargo tanks, and highway cargo tank rollovers.

In the few minutes I have this morning, I will focus on the first of these topics—positive train control—and the significant improvement to rail safety that it will bring. The competent, highly trained professionals in the railroad industry all share a common trait. No matter how good they are, they may occasionally make mistakes, just like any other human being. Positive train control provides a very important back-up, a redundancy, against the inevitability of human error in four railroad accident scenarios that are most likely to cause injury and death.

Those four scenarios are: collisions between trains, overspeed derailments, incursions into work areas, and going through a switch that is incorrectly aligned. That is why the NTSB placed positive train control on its Most Wanted List when it created the Most Wanted List in 1990. Positive train control remained on that list until we removed it when Congress, in its wisdom, enacted the Rail Safety Improvement Act of 2008. This Act requires Class I railroads to implement positive train control by December 31, 2015, over rail lines that carry poisonous by inhalation or toxic by inhalation hazardous materials, or that carry regularly scheduled inter-city or commuter passenger trains.

In the past 5 years, the NTSB has investigated 20 railroad accidents that involve collisions or derailments, some of which are shown on these slides. Of those 20, most resulted from operator error, and more than half could have been prevented or mitigated by positive train control.

The redundancy that is provided by positive train control is becoming even more crucial as we are beginning to see a very disturbing increase in operator distraction from personal electronic devices in all modes of transportation. An example of this is the distraction that led to the tragic collision in 2008 between a passenger train and a freight train in Chatsworth, California, that resulted in 25 fatalities and more than 130 injuries.

Another technology implementation success story occurred with the airlines, with the advent of terrain awareness warning systems to warn pilots when they are dangerously close to terrain, and dangerously close to one of the most lethal types of aviation accidents, commonly known as controlled flight into terrain, or CFIT. That warning system serves as a very important backup or redundancy for the occasional human error by competent, highly trained pilots.

Thanks to the requirement in the U.S. for terrain awareness warning systems, we have not had a domestic CFIT fatality involving a passenger air carrier since 1996, despite the fact that CFIT is the second leading cause of aviation accidents worldwide.

The Rail Safety Improvement Act of 2008 and the Federal Railroad Administration's 2009 rulemaking implementing the Act will significantly improve rail safety by creating much-needed safety redundancy for the inevitable failures of human performance, such as those listed in this slide.

In closing, the NTSB was created to advocate for transportation safety, and to push Federal and State agencies and industry to do the right thing for safety. Chairman Shuster, Ranking Member Brown, and members of this subcommittee, implementing positive train control is the safe thing to do and the right thing to do.

Thank you again for the opportunity to appear before you today. Mr. Stephen Klejst, director of the NTSB's office of Railroad, Pipeline, and Hazardous Materials Investigations, will remain to respond to questions. Thank you.

Mr. SHUSTER. Thank you very much, Mr. Hart. I appreciate that.

And next, Mr. Joe McHugh, vice president of government affairs and corporate communications for Amtrak.

Mr. MCHUGH. Thank you, Mr. Shuster, Ms. Brown. It is very nice to see all of you here, members of the committee. Thank you for this opportunity to testify.



Briefly, we have been doing very well at Amtrak. We have just this week announced our 17th consecutive month of ridership increases. And over the period from 2000 we have had a 40-percent increase in ridership for the corporation.

Briefly, we at Amtrak like the broad contours of the administration's fiscal year 2012 budget proposal, which begins to move rail in the direction of making it an equal partner in surface transportation funding and policy. The proposal would consolidate traditional Amtrak and high-speed rail programs and provide some degree of funding stability and certainty that would help us to advance our systems, and would make it similar to those available for highway and aviation systems.

As the only intercity rail passenger provider, and the only currently operator of high-speed service in the United States, we believe that a rail title—the surface bill should build on the proposal advanced initially by the administration. And we would recommend five objectives to that.

First, we would recommend that the rail title provide a multiyear dedicated funding source for high-speed service and for intercity passenger rail. We can define what high-speed means, but we should begin to look at opportunities to advance rail passenger service, particularly connecting major metropolitan areas. Major capital programs such as railroad construction require a commitment of funds, and are very hard to initiate, let alone accomplish, without some funding certainty.

Second, we would hope to establish a national investment strategy to guide project planning and execution. We would look to future trends, and we would look to work with the FRA, regional body, State governments, and other key stakeholders that we have traditionally worked with.

Third, we would ask that the legislation not overlook some of the unique assets and practices that Amtrak has to offer. We have a lot of experience now, over 40 years of operating service throughout the United States, in 46 States, and we have an incredible amount of reserves, assets, and knowledge. We would hope that the committee would seek to leverage some of those capabilities as they move forward on the legislation.

Fourth—five ideas here—fourth, the rail title should also ensure coordination between various stakeholders, better planning, and project execution among FRA, Amtrak, the region States, and our host railroad partners as a requirement to ensure that new and existing services are integrated with other systems. And that will help maximize benefits and provide better economies of scale. Planning coordination should facilitate and not hinder multistate partnerships, such as what we have in the northeast corridor and what we have also seen developing in the Midwest, with the Midwest regional rail initiative.

Finally, we would ask that—the rail title is an opportunity to bring some order to licensing and insurance requirements for passenger rail operators. Amtrak is required by statute to have \$200 million in insurance coverage. Other operators do not necessarily have to carry insurance, even if they receive funding under other Federal programs other than PRIIA. The lack of a standard Federal liability requirement is a major impediment, and makes it dif-

difficult to develop new services, and raises the risk that liability for damages could be offloaded on the taxpayer.

It is very clear that the basic assumptions about travel that had governed our policy for decades have changed. Even the development of electric automobiles raises the implicit question of whether a gas tax will continue to be a reliable funding mechanism 8 years out.

So, we look forward to working with you on addressing those problems, and we hope that this surface reauthorization bill will become a revolutionary and not evolutionary advancement in transportation. And we hope that we will reduce some of the funding silos and have a more results-based funding requirement.

Thank you very much.

Mr. SHUSTER. Thank you, Mr. McHugh. I appreciate that.

And next up, Mr. Ed Hamberger, president and CEO of Association of American Railroads. Mr. Hamberger, please proceed.

Mr. HAMBERGER. Thank you, Mr. Chairman, members of the committee, for the opportunity to present the views of AAR members on reauthorization of SAFETEA-LU.

An efficient and safe transportation system is, of course, essential to the growth and prosperity of our Nation. The system today is overburdened. And it is important that you have acknowledged this problem, and are seeking ways to fix it. Be assured that America's railroads stand ready to work with all policymakers and stakeholders to be part of that solution.

Indeed, moving more freight and passengers by rail can provide enormous public benefits: less pollution, less congestion, less energy consumption.

As you work toward legislation, we would like you to consider three key points. The first is the importance of a level playing field to freight railroads. This does not exist today. America's freight railroads operate almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. Indeed, we pay taxes on our own right of way.

By contrast, trucks operate on publicly financed highways, and the taxes they pay do not come close to covering the damage they inflict on the Nation's highways. This already places railroads at a competitive disadvantage. A recent study of DOT data indicates that 80,000-pound trucks underpay their fair share today by \$.28 a gallon. Yet there are several proposals to increase the current size and weight limit on trucks. None of these proposals contains measures that would meaningfully reduce the tax subsidy enjoyed by larger trucks.

In fact, at 97,000 pounds, the taxpayer subsidy to the trucks would be \$1.17 a gallon. And the result would be significant diversion of freight rail to highway—freight from rail to highway, with particularly dire consequences for short line railroads.

The second point we would like you to consider is the importance of regulatory certainty for railroads. Thanks to partial deregulation brought on by the Staggers Act, railroads were able to significantly increase investment and infrastructure and equipment. Since 1980, we have invested some \$480 billion private funds—that's \$.40 out of every revenue dollar—into infrastructure and equipment. The industry appreciates the letters sent by the bipartisan leadership of

the full committee and this subcommittee to the Surface Transportation Board opposing changes to the regulatory system that would impeded our ability to continue to make these needed investments. This year alone we anticipate a record \$12 billion of investment in CapX.

However, our ability to continue this level of investment is threatened and undercut by uncertainties created by issues such as: an overly broad positive train control mandate, as we discussed with this committee last month; high potential liability stemming from the common carrier obligation to carry extremely hazardous materials; proposals to impose a safety fee on railroads not charged to other industries; and proposals to create a freight fund to be financed by a fee on freight shipments.

This imposition of such a fee would be especially egregious, since, as I have just noted, we already pay for our own infrastructure.

Finally, there are a number of existing programs covered by this legislation that work very well, and we would hope they would continue. Among these is the section 130 grade crossing program that financing grade crossing safety improvements, which, along with educational programs and outreach from Operation Lifesaver, is credited with the fact that today grade crossing accidents, deaths, and injuries are at historic lows.

We also believe Congress should continue to encourage metropolitan planning organizations to consider freight transportation needs, and we support, including the short line tax credit, CMAQ program, and public-private partnerships.

Thank you for the opportunity to appear before you this morning.

Mr. SHUSTER. Thank you very much, Mr. Hamberger. And next, General Richard Timmons, president of the American Short Line and Regional Railroad Association. General, please proceed.

General TIMMONS. Good morning, Mr. Chairman, and members of the committee. Thank you for the invitation to be here today. I am Rich Timmons, president of the American Short Line and Regional Railroad Association. We represent 550 Class II and Class III railroads across North America. I appreciate the opportunity to list those items the Short Line Association believes should be included in the rail title of the SAFETEA-LU reauthorization bill.

First, let me say that we endorse the concepts presented by Mr. Hamberger and the AAR, and I will expand on a number of those in this testimony. But each of their recommendations help the short line industry or make for a stronger Class I industry, which is good for the entire railroad industry, as a whole.

Our first priority is to extend the short line rehabilitation tax credit, which expires at the end of this year. We know this is dealt with in the tax title of the bill, but our hope is to include the extension in your final SAFETEA-LU reauthorization. And we want to emphasize how important this is to the short lines, to members of this committee.

Congressman Shuster and Congressman Costello are original cosponsors of our current extension legislation, H.R. 721. In the last Congress we had 262 House cosponsors, including 57 members of the Congress' T&I committee. We hope every member of the current T&I committee will sign on as a cosponsor of H.R. 721.

We also hope that in your discussions with the Ways and Means Committee you will take the time to emphasize how important the tax credit is to maximizing investment in infrastructure, preserving service to small and medium-sized shippers, and improving track safety. In a fiscal environment where Federal funds are funds for maintaining freight rail infrastructure will undoubtedly be constrained, the fiscally responsible step is to encourage private enterprise to fund private sector improvements with private dollars, and the section 45D does just that.

We strongly encourage the committee to enact the so-called SHIPA legislation extending the current freeze on longer and heavier trucks to the entire national highway system. Increasing truck size and weights will divert rail traffic to the highways, increasing congestion and highway repair costs. The change will also create a huge shortfall between the truck share of highway damage and their contribution to those costs.

As indicated, we support the AAR recommendation on positive train control. In addition, we believe the Federal Government should help pay for this unfunded mandate. Funding PTC is well beyond the resources of short line railroads. It will force short lines to reallocate money from much more important rehabilitation projects to a highly complex system that will result in virtually no safety benefits for the typical short line operation.

As Chairman Mica and many other members of the committee have stressed repeatedly, the RRIF program has the ability to invest \$35 billion into rail improvements without an appropriation, and using private sector commitments to repay the loans. However, absent improvements, this program will remain stuck where it has been for the past 10 years.

In February, the short line industry testified before this committee concerning the RRIF program. And last month we participated in a T&I staff workshop on the same subject. We have made a number of recommendations, including providing a TIFIA-like subsidy that would allow more flexible loans, increasing FRA staffing resources, bringing the credit council and OMB participation into line with the 90-day requirement, and easing certain collateral requirements. We will work with the Congress to draft language on these subjects.

We encourage the committee to eliminate the unintended impact on small railroads, the hours of service provisions in the Rail Safety Improvement Act of 2008. Clearly, they were drafted to address long-haul conditions, but do not fit the mostly daylight short-haul operations of small railroads. Granting relief from restrictions not at all relevant to small railroad operations will not impact safety, and continue the service which shippers expect from their Class II and Class III carriers.

Finally, we urge you to reauthorize the rail relocation program. This is a—one of the very few programs that provide direct financial assistance to railroads. While railroads were able to compete for last year's Tiger funding program, the rail relocation program is geared specifically to railroads, and can be enormously effective in addressing rail safety issues associated with grade separations and improving movement in and out of yards and industrial parks.

I appreciate the opportunity to present the views of the short line industry. We would be pleased to answer any questions that you may have at the appropriate time. Thank you very much, Mr. Chairman.

Mr. SHUSTER. Thank you very much, General. Next, Mr. William Millar, the president of the American Public Transportation Association.

Mr. Millar, please?

Mr. MILLAR. Good morning, Mr. Chairman, Ranking Member Brown. On behalf of APTA's 1,500 public and private sector members, it is my pleasure to be here.

APTA urges the Congress to enact a well-funded, 6-year, multimodal surface transportation bill as soon as possible. It is one of the most important actions Congress can take to improve mobility while preparing our Nation for the coming economic and population growth.

Increasing ridership on commuter railroads and Amtrak indicates that Americans are clamoring for options to avoid high gas prices, congested roadways, and crowded airports. Commuter railroads are eager to meet demands for more service, but face significant obstacles in that effort.

At the same time, operators want to improve safety. We are grateful that this committee, on March 17th, held a hearing on the Rail Safety Improvement Act, which requires, among other provisions, that commuter railroads implement positive train control by December 31, 2015.

As the APTA witnessed explained that day, there are three key items needed to implement positive train control: first, adequate Federal funding; second, sufficient radio spectrum; and, third, more time to develop, test, and implement the required technologies. Implementing PTC on the Nation's commuter railroads will cost more than \$2 billion. These costs are forcing commuter railroads to consider reducing service or deferring other critical system safety and state of good repair projects, in order to redirect limited funds to get PTC online by 2015. Examples of these deferrals include bridge replacements, electrical substation modernization, and shop and yard improvements.

Deferring safety projects or cutting service should not be the price of implementing PTC. We urge the Congress to fund at least 80 percent of PTC costs for commuter railroads, extend PTC implementation deadline for commuter railroads by 3 years, and direct the Federal Communications Commission to set aside adequate radio spectrum at no cost to commuter railroads. If these things are done, PTC can happen very quickly.

Turning to high-speed and intercity passenger rail, a recent survey of nearly 25,000 Americans found that 62 percent expected to use high-speed rail, if it were available, while only 11 percent said they would not. Amtrak reported record ridership last year with its higher speed Acela service ridership growing twice as fast as its regular service.

Some 32 States plus the District of Columbia are forging ahead and planning and implementing rail improvements. A recent study found that each billion dollars invested in high-speed rail supports at least 24,000 jobs. That means that the 6-year investment pro-

posed by President Obama would spur nearly 1.3 million jobs in construction, manufacturing, and service industries. APTA supports the President's proposal, and we urge this committee to carefully consider the importance of creating and sustaining 1.3 million mostly private sector jobs.

In order to properly fund—besides properly funding high-speed and intercity rail, a long-term legislative authorization is also required. APTA supports passenger rail that connects with other modes of transportation, encourages the growth of rail freight service, provides for strong investment by the private sector, requires open and fair competition, expedites program delivery, and establishes common standards across DOT agencies for the efficient implementation of NEPA provisions, while adhering to Federal rail laws, Americans with Disability Act, and the inclusion of disadvantaged business enterprises.

Mr. Chairman, thank you for the opportunity to be with you. I will look forward to answering your questions at the appropriate time.

Mr. SHUSTER. Thank you very much, Mr. Millar.

Next, Thomas Hart, the vice president of government affairs, and general counsel for the US High Speed Rail Association.

Mr. Hart, proceed, please.

Mr. THOMAS HART. Thank you, Chairman Shuster and Ranking Member Brown. On behalf of the United States High Speed Rail Association, its president, Andy Kunz, and its 250 members, I extend greetings to this prestigious subcommittee on railroads, pipelines, and hazardous material. I am here representing the USHSR as its vice president for government affairs and general counsel. I also serve as the director of the Washington office of the national law firm of Quarles and Brady.

The United States High Speed Rail Association is a non-profit trade association committed to advancing the state of—and our nationwide true high-speed system, completed in phases across the country. Our mission is to build widespread public, business, and political support for a major investment in the Nation's high-speed rail network. We support a 6-year authorization bill under consideration by this subcommittee.

The United States High Speed Rail Association is pleased to share its thoughts on how to expedite the development of high-speed rail in the United States through the investment of private funds in this infrastructure.

On January 27th I had the pleasure to testify in New York before the full committee. Many of you were there in New York. And the issue of public-private partnerships was discussed at great length. Shortly thereafter, we had a summit hearing in Washington, where subcommittee Chairman Bill Shuster and Ranking Member Corrine Brown and other Members of Congress and over 400 attendees participated in that focus discussion on the deployment of high-speed rail in America.

We are delighted today to offer model legislation to establish a Federal program that will assist in the rapid creation of a true high-speed rail system funded in part by innovative public-private partnerships. Mr. Chairman, the model legislation is part of my testimony. I would like to have it introduced into the record.

Mr. SHUSTER. It will be in the record. Thank you.

Mr. THOMAS HART. Thank you. Presently, most of our national transportation systems are overloaded and in a state of disrepair. This causes delays and costs more than \$100 billion per year in lost time and wasted fuel. The price of oil is already traded at over \$100 a barrel, and is expected to continue to rise. The quicker we can build alternative forms of transportation, the better for the Nation.

There are many corridors in the United States that are of high interest to private investment. One, of course, is the northeast corridor, which we have discussed among this panel, and among the committee on numerous occasions. The northeast corridor is ripe for high-speed rail investment and private investors stand ready to assist in that effort.

Chicago is also a hub for high-speed rail traffic that could be very profitable. And the West Coast systems in California and Las Vegas also have great potential.

To very quickly focus on the legislation that is being offered by the US High Speed Rail Association today, let me highlight a couple of key provisions. Section 19 talks about the small business initiatives that are necessary. It is true that the FRA has not yet developed a small business program, and they should do so rapidly. Also, we propose an economic development credit for transportation infrastructure developed around the train stations for high-speed rail.

We also propose a creative way for private investment to come into Amtrak. There is only one shareholder of Amtrak, and that is the United States Government. We suggest that a private offering be made of Amtrak stock up to 5 percent. So let us test the market and see if Amtrak can stand the test of Wall Street.

We also encourage expanding the RRIF program and the TIFIA program, and we do support the creation of an infrastructure bank.

Mr. Chairman and Ranking Member, we are pleased to work with you through these issues, as this legislation moves through Congress and the Senate. Thank you again for your leadership in this issue, and we are ready to answer any questions or comments that you have regarding the legislation. Thank you.

Mr. SHUSTER. Thank you, Mr. Hart. Next, Mr. Ray Chambers, who is the executive director of the Association of Independent Passenger Rail Operators. Mr. Chambers, please proceed.

Mr. CHAMBERS. Thank you.

Our organization is only about 6 weeks old. We are dedicated to increasing the passenger rail network and increasing the development of the Nation's rail infrastructure. We testified before you on March 11th. We outlined a specific program at that time for reforms in the Passenger Rail Investment Improvement Act.

At that time, Chairman Shuster, you made a statement that—on PRIIA—“For the first time, rail capital infrastructure programs were established that gave the States primary control to improve and expand intercity passenger rail services.” Expanding on that idea is the heart of what our association is all about.

We are recommending a self-contained section to the rail title that would promote public-private partnering and passenger railroading. We are calling for a strong passenger rail commission that

would oversee that program. One role of the commission will be to identify regulatory burdens and put forward new and expedited procedures.

In the written testimony here I have outlined several areas where we believe reforms can be taken in the rail title of this bill. One of those is RRIF. What Ranking Member Brown outlined is very much in accord with where we would like to see RRIF go.

We believe the section 214 passenger pilot program is too complex and should be streamlined. Similarly, the State-supported rail program should be reformed. On that program, we believe that the authority of the States should be increased over State-supported routes of fewer than 750 miles, and that competition for operations should be encouraged.

Also on the regulatory front we think that the environmental and other regulatory permitting of work, particularly on existing track, is too lengthy, too expensive, and is too complex. Right now, if a freight railroad wants to build a second track on an existing right of way with private money, it can be done with no regulatory approvals. If public funds are used to do exactly the same thing, there is a full-blown environmental permitting and approval process. We recommend that if the line exists and a public project is approved, the freight standard for permitting improvement should be applied.

Now, while passenger expansion is essential, we also believe it must not be at the expense of the freight railroads or labor. Negotiations for access should be arm's length, in terms of the freight railroads. PRIIA labor protections should be carried forward.

Now, public-private partnering is relatively new to the American rail scene, and that is why we need a specific initiative or proposal to support it and enhance it. Many issues need to be worked through, and that is the purpose of the commission that we are proposing.

We know that, in the final analysis, private partners will create efficiencies and cost savings that will be passed back to the States that will lower operating subsidies, will help guarantee loan repayments, and will improve services. These partnerships, by definition, include private sector participation.

We think that our proposal is in direct line with what Chairman Mica and Shuster have called for to reduce regulatory burdens, to increase competition and private sector participation in passenger rail service. We also think that it is the best way to reach President Obama's goal of putting high-speed and intercity passenger rail option within the reach of most Americans.

Finally, we applaud the leadership of this committee with the decision to make the next 6-year surface transportation act a full inter-modal bill, along the lines of Ms. Brown's comments.

We believe that a strong P3 program in the rail title with Federal oversight and State responsibility can begin to establish rail as the third American transportation option, along with highways and aviation. Thank you.

Mr. SHUSTER. Thank you, Mr. Chambers. Next, Toby Fauver, who is the deputy secretary of local and area transportation for the Pennsylvania Department of Transportation. Or, as we like to call him, he is the Rail Guy.

Mr. FAUVER. Right.



Mr. SHUSTER. So——

Mr. FAUVER. Correct. Thank you.

Mr. SHUSTER. Proceed, please.

Mr. FAUVER. I am going to spend a little bit of time giving you some highlights of some of my written testimony. I want to start off by talking briefly about the projects that we have done in Pennsylvania and, in particular, just to give you a highlight of what we have accomplished.

In 2006, we completed a partnership program with Amtrak to restore the Keystone Corridor between Harrisburg and Philadelphia. There is still a lot of work that needs to be done there. But we achieved a lot of success. We reduced travel time in that corridor to make it competitive with the automobile. Our express trains actually—you can travel between Harrisburg and Philadelphia faster than the automobile. And since 2006, ridership on that line has grown by 45 percent.

But there is still a lot of challenges. Thirty years after the ADA law passed, we still have stations that do not meet ADA, that are not accessible. We still have challenges with equipment that does not meet ADA, and is not accessible. And we need to address that. Much of our infrastructure is still 80-plus years old, needs to be replaced and meet state of good repair and improve reliability of the line.

So, where are investment priorities? High-speed and intercity rail programs are about connecting high-density city areas. And doing so will promote higher levels of sustainability. In Pennsylvania, our population increased about 1 percent over the past decade, but our population spread out in Pennsylvania, consuming a 50-percent increase in land for that population growth. And I believe that promoting intercity rail and good development around stations will help to reduce that trend.

It is important to note that Federal dollars we were talking about for high-speed rail and the cost—they are focused on the cost for building systems. States and cities still have to address with how they are going to pay for the operating expense and maintenance expense, long term. In Pennsylvania, we have made those choices, and have been doing that since the 1980s, and have been contributing more and more every year. This past year we are contributing over \$9 million, just the service between Harrisburg and Philadelphia.

Many States, including Pennsylvania, are struggling with the new Federal requirements under section 209 of PRIIA, and it is something that States and AASHTO are working actively with Amtrak to try to address. But a State like ours will face a four to five times increase in charges for operating expense that we are not going to get any additional service or any improvements for. And that is going to be something that is going to be hard for our State legislature or governor to have to deal with, especially when it is a federally owned company, Amtrak, and our State has no say in labor contracts, overhead spending decisions, or work practices.

We cannot ignore investing in rail infrastructure and expect that some day we are going to emerge with the best system in the world. We also cannot bury ourselves in bureaucracy that slow

down projects and system development. I want to focus on a couple things that I would suggest for reauthorization.

One of the things is that we need to eliminate the overlapping authority for NEPA clearance between our Federal departments, Federal agencies, under USDOT. We have experienced numerous projects where we have started with one source of Federal funding in a project, and then added another source of Federal funding from a different agency, had NEPA clearance from one agency, and then had to go back, spend a year-and-a-half, two years, getting NEPA clearance from a second agency.

That creates—number one, it creates a big time delay in delivering projects. It adds cost, cost growth in the project cost, and it also costs our State taxpayers more money, which didn't change the project or change the results. That is a big problem.

NEPA is one law. It applies to all those agencies in the same way. But they have all interpreted it differently in the way they apply it.

In the case of passenger rail, we need to learn from the rest of the world and think about separating infrastructure ownership from infrastructure operation, especially if we are going to expect to introduce competition and look at innovative practices, going forward. It is a big challenge. How do we introduce public-private partnerships when we have a railroad that owns the infrastructure or an area that owns the infrastructure and is also responsible for operating it? And we have got to find a way to deal with that.

So the next thing I wanted to focus on, I guess, is—

Mr. SHUSTER. That means you are going to wrap up.

Mr. FAUVER. OK. We need to have dedicated funding for both capital and operating expenses going forward, and that is in partnership between State and Federal Government. Thank you.

Mr. SHUSTER. Thank you very much. Just do not tell the Secretary I cut you off.

[Laughter.]

Mr. SHUSTER. And thank you very much for being here today.

Next is Mr. Thomas Simpson, who is president of the Rail Supply Institute. Mr. Simpson, please proceed.

Mr. SIMPSON. Thank you, Mr. Chairman. I am honored to be here today. I am here on behalf of over 225 members of the Railway Supply Institute, the companies that provide goods and services to our Nation's freight and passenger railroads. They employ somewhere between 100,000 and 150,000 people.

The—I would like to talk a little bit about the economic downturn, the effect it has had on my industry. Strong railroad capital expenditures continued through the downturn, and that benefitted communications, the maintenance of members. The catastrophic loss of freight traffic, however, adversely affected the freight car and locomotive builders. Only now are they starting to enjoy a tenuous rebound. And, of course, sporadic investment in our city passenger rail has not allowed that sector to grow like it should be able to.

I am going to refer you to my wonderfully written testimony, and simply list the issues that are of importance to us, and would like to discuss them at length, if you would like me to.

We think you should continue the section 130 highway rail grade crossing safety program, the program that allows lights and gates to be installed at highway rail intercrossings, and also continue to fund Operation Lifesaver. The Railway Supply Institute was a founding founder of the Operation Lifesaver, Incorporated. I sit on its board of directors. It is hard not to argue that Federal investment in the section 130 program and Operation Lifesaver has led to the dramatic decrease in accidents at highway rail grade crossings, with an increase in traffic expected on both our highways and our railroads. With faster passenger trains and more passenger trains, now is not the time to stop funding those two very important highway rail safety initiatives.

I join my friends, Joe McHugh and Bill Millar, to argue for a dedicated source of funding for intercity and high-speed passenger rail that will allow Amtrak and the States and, yes, suppliers to plan and invest in the future without having to wait year in and year out for appropriations.

You should simplify the Buy America regulations. Currently there are three different Buy America policies: one for transit, one for Amtrak, and one for high-speed rail. At best, this is confusing to suppliers, and they ought to be unified and uniform.

I ask you to retain the current truck size and weight policy that the Federal Government has. An increase in truck size and weights will devastate the freight car-building industry, the car-leasing industry. And only now, as I pointed out, are they enjoying a tenuous rebound.

We, of course, endorse the short line infrastructure tax credit.

And all these programs that we endorse are incredibly important to the railway supply industry, and incredibly important to creating—preserving and creating jobs in this country.

I will bring it in on time, Mr. Chairman. Thank you very much.

Mr. SHUSTER. I appreciate that. You made up for PennDOT going over.

[Laughter.]

Mr. SHUSTER. I will take note of that. Thank you very much, Mr. Simpson.

Next, Mr. Scott Paul, who is the executive director of the Alliance for American Manufacturers. Mr. Paul, please proceed.

Mr. PAUL. Mr. Chairman, Ranking Member Brown, thank you for the opportunity to testify today. I speak to you as the executive director of a labor management partnership that includes many stakeholders that make rail and make products that go into the rail infrastructure, including the workers at ArcelorMittal in Steelton, in Pennsylvania. And I also come to you as a one-time resident of Addison, Pennsylvania, in Somerset County, which, as you know, you can miss if you go by too quickly.

Mr. SHUSTER. Addison?

Mr. PAUL. Addison, yes. I am here to talk about Buy America today. We believe strongly that every effort must be made to ensure that American-made iron, steel, and other manufactured goods are used extensively in our rail infrastructure.

Buy America is not a new concept. For nearly 80 years, the United States has had domestic sourcing or Buy America laws on the books. To support our national security capabilities, Buy Amer-

ica laws were expanded in the 1940s to apply to defense spending. And in the early 1980s, Buy America requirements were signed into law by Ronald Reagan for highway and transit projects for federally funded grants.

In a nod to the benefits of domestic sourcing, Federal policymakers have applied Buy America provisions to Amtrak and to the high-speed rail, intercity rail passenger programs. A Buy America provision was first applied to Amtrak when the Rail Passenger Service Act was passed by Congress in 1978. And when Congress passed the Amtrak Reorganization Act of 1979, it reiterated its desire to reinvest U.S. tax dollars in jobs, noting in the conference report that “It is the conference committee’s strong belief that Amtrak equipment purchased with U.S. tax revenue should continue to be returned to the U.S. economy by strongly favoring American suppliers and U.S. labor.”

That U.S. tax dollars should be reinvested in the economy is a view echoed by today’s policymakers. The Federal Railroad Administration recently observed, relative to the high-speed rail program, the Buy America requirements that “encouraging grantees to use manufacturers or suppliers who maximize domestic content will help it to achieve its goal of 100 percent domestic content in the near future.”

To realize the job-creating and economy-expanding potential of Buy America preferences in our infrastructure laws, it is important that the preferences apply to all manner of Federal aid infrastructure programs in a way that maximizes domestic content. As stated in a 2010 Northeastern University study, “Full domestic sourcing would dramatically increase employment.”

In the context of passenger and freight rail, this means that the Buy America provisions should be applied across programs in a manner that maximizes U.S.-produced content. This will create more jobs, expand economic opportunity for U.S. businesses, and enable businesses to better manage their supply chains.

The domestic content requirement currently applies to the high-speed rail program. It should be applied to all Federal aid programs for rail infrastructure.

For instance, the domestic content Buy America provision should extend to the railroad rehabilitation improvement financing program to require a preference for U.S. taxpayer-produced goods in return for the \$35 billion in tax dollars authorized to the RRIF program for direct loans and loan guarantees to finance the development of rail infrastructure. I would add that the Buy America program does include safeguards to present—to prevent monopolization or high costs, and there is scant evidence that Buy America requirements raised costs for projects that are underway.

We strongly believe that the waiver process for Buy America waivers needs to be made much more transparent and airtight. We urge the subcommittee to review ways to increase and streamline transparency when waivers are requested and issued. Some, but not all, government agencies make waiver requests available to the public for 15 days before approving the purchase of goods manufactured abroad. We believe that needs to be strictly enforced and applied to all Buy America programs.

I would also point out that the Buy America requirements have enabled a supply chain to be developed for the manufacture of rail products, that they are fully consistent with our international trade obligations, and that they are longstanding U.S. policy.

Thank you for your consideration, Mr. Chairman.

Mr. SHUSTER. Thank you very much, Mr. Paul.

Next, Ms. Helen Sramek, who is the president of the Operation Lifesaver.

Ms. SRAMEK. Mr. Chairman, thank you, and members of the subcommittee, for the opportunity to appear before you today to discuss a small, but very important and effective program that Congress has supported for almost 40 years.

Operation Lifesaver exists because of a startling fact: About every 3 hours in the United States, a person or vehicle is hit by a train. We are the only nationwide public safety organization whose sole mission is to save lives and reduce injuries at highway rail crossings and on or around railroad tracks.

On our website, you will see the story of Robin Potter, a mother from Fresno, California, who lost her 15-year-old son 2 years ago because he foolishly decided to play chicken with a train. That game cost him his life. Robin is now an Operation Lifesaver certified presenter. She talks to audiences in her community about that horrible day.

Our website also features the story of a locomotive engineer who tells what it is like to be part of a train crew watching helplessly as a train is slammed into emergency braking, hoping it will stop in time to prevent a collision.

Operation Lifesaver began as and remains a grassroots-driven organization. All 50 States have independent OL programs under the umbrella of our national program. The national organization gives focus, consistency, and expertise to the work that is being done in the States. We develop customized training programs for target audiences like new drivers, truck and school bus drivers, law enforcement and emergency responders. We develop the safety messages and materials that are used by our volunteers, and we will soon be launching a state-of-the-art eLearning program for professional truck drivers.

Because we know that 18- to 30-year-olds are an important audience, we are reaching out to them, using social media. Long ago, Congress recognized that a modest investment in the efforts of a national organization to bring cohesiveness and expertise to public outreach efforts would yield results.

My purpose today is to urge Members of Congress to maintain your investment in this national program. The highway trust fund dollars that flow to the national organization demonstrate that safety is a shared responsibility between the public and private sectors.

Consider the following: A collision between a train and vehicle is likely to be devastating, usually resulting in loss of life or catastrophic injury. These collisions tie up crossings for hours, wreaking havoc in communities, and impeding the flow of commerce. Forecasts are projecting more trains in our future. Freight traffic is increasing as the economy improves. We expect more commuter

and light rail systems to come online as passengers turn to rail to meet growing transportation demand.

The rate of pedestrian rail casualties has increased, bringing with it the need for OL to enhance its efforts on the trespass issue. An impatient risk-taking population either does not know or ignores the fact that walking or playing on train tracks is illegal and possibly fatal.

Today's Operation Lifesaver recognizes that its traditional methods of public outreach have moved us forward and saved lives. But a small national organization like ours is nimble, adapting to today's world, where technology dominates every form of communication.

To conclude, in the four decades since its founding in 1972, OLI's grassroots network has become part of the national rail safety solution through partnerships, presentations, organized media events, and more recently, the enhanced use of technology.

I urge Members of Congress to maintain your investment in a national Operation Lifesaver program. As the need for safe transportation grows, so does the value of Operation Lifesaver. Thank you.

Mr. SHUSTER. Thank you very much, Ms. Sramek.

Next, Mr. James Stem, Jr., the national legislative director for the United Transportation Union.

Mr. Stem, please proceed.

Mr. STEM. Good morning, Mr. Chairman, Ranking Member Brown. Thank you for the opportunity to present our viewpoint, and the concerns of the 70,000-plus men and women that are working today, as we speak, operating the trains that are moving freight and passenger trains around the country.

The bipartisan leadership of this committee in the last two decades have held several dozen hearings and—confirming the direct relationship between adequate rail safety oversight and the profitability of our Nation's railroads.

Safety is not just good public policy in our rail industry. It is also good business practice. The record profitability, the record productivity of our industry are the results of the current regulatory scheme affecting the rail operations. Today an average manifest freight train will contain more than \$150 million worth of equipment and commodity. And the operation of that train over hundreds of highway, rail at-grade crossings also could potentially involve hundreds of millions of dollars in potential liability for that railroad company.

And we, the United Transportation Union, and every aspect of this industry, supports Operation Lifesaver. And I would like to point out that, by definition, high-speed rail is the solution that eliminates grade crossings.

The United Transportation Union and other rail unions have been an integral part of this committee's actions on rail safety and railroad development. And we commit to you that we will continue to offer our view of reality for your consideration.

Our railroad industry does not have a problem today with the current oversight process for the movement of hazardous materials. That does not exist in our industry. We do have a major problem in the application of the current hours of service laws for safety-

critical operating employees. I will discuss the needed corrections and application in a moment.

The most important point that we will make today is that the current regulatory process in place within the USDOT is working very well for our Nation's railroads and other departments in the industry. In these times of economic strife, our Nation's freight railroads are enjoying record profitability and record productivity. We urge this committee to keep in mind that the laws and regulations that are in place today have not hampered the ability of our Nation's railroads to prosper significantly during the current economic downturn.

The key to this regulatory success is a consensus-based negotiated rulemaking process called the Railroad Safety Advisory Committee. Virtually every person that is delivering testimony before you today is a part of that process. RSAC has top-level representation from Class I railroads, passenger commuter railroads, short line railroads, the NTSB, the rail suppliers and equipment. RSAC was first chartered during the Clinton administration, and was widely accepted because, for the first time ever in our history, every constituency had an opportunity to present their ideas and concerns in the presence of other subject matter experts in the industry.

In our discussion today concerning the safe movement of the hazardous materials, no action would produce a higher level of return in safety than giving the operating employees a predictable work schedule. The Rail Safety Improvement Act, as signed into law, provides 10 hours of undisturbed rest between work assignments. The current application of that required rest period is immediately following safety-critical service. This application is misplaced, because it does nothing to improve the predictability of the work schedule.

One small improvement that will make a tremendous difference in the safety of all train operations is to simply move the required 10 hours of undisturbed rest from immediately following service to immediate preceding service.

We have included in our testimony today some bullet points that we would like to work with this committee to have introduced that will provide some hours of service technical corrections.

Thank you for the opportunity to testify.

Mr. SHUSTER. Thank you very much, Mr. Stem.

Next, Mr. Stephen Bruno, the vice president of the Brotherhood of Locomotive Engineers and Trainmen.

Mr. Bruno, please proceed.

Mr. BRUNO. Good morning, Chairman Shuster, Ranking Member Brown, and members of the committee. Thank you for holding this hearing. My name is Stephen Bruno. I am the national vice president and the interim director of regulatory affairs for the Brotherhood of Locomotive Engineers and Trainmen.

In the short time I have available, I would like to address the issue of removing regulations in the industry before I move on to our specific concerns for the surface transportation reauthorization.

Many of the regulations that exist were created in response to tragedies. The most effective regulations in the complicated railroad regulatory scheme were developed by stakeholders, usually

done through the Federal Railroad Administration's railroad safety advisory committee process, in response to safety concerns. Adding, amending, or removing regulations should use the same process.

I would like to briefly mention a few proposed regulations, including emergency escape breathing apparatus and positive train control, and the existing regulations for the movement of hazardous materials. Such regulations will and so save lives by preventing accidents and fatalities.

I would like to draw your attention to positive train control, or PTC. PTC is a safety overlay that will significantly reduce human factor-related accidents, and prevent loss of life. The railroads' suggestion last month that they will implement other alternative safety practices and devices which will provide an equivalent level of safety is a disingenuous statement. These technologies that they cited have been available for decades, and they are now only proposing to install them to avoid the PTC mandate. If the mandate is removed, the railroad's incentive to install these alternatives will also be removed. It will never happen.

Regarding the hazmat, in March, last March, we filed comments with FRA on special movement permits for leaking tank cars. The number of these movements has steadily increased over the past 16 years, and it has doubled since 2007. This is a significant increase, and it must be investigated.

I would like to turn to another issue that might be included in the surface transportation reauthorization which concerns the BLET. For 40 years, Amtrak has run our Nation's passenger rail system in an unparalleled way. Amtrak and its skilled employees have managed to move passengers in the safest, most efficient means possible, despite being appropriated only enough money to fail. Congress can best ensure the public good by maintaining Amtrak as our Nation's passenger rail service provider.

History warns us that private service would only be provided where it is profitable for investors and shareholders. The public good would be ignored. Therefore, instead of threatening our citizens with privatizing Amtrak, you should instead be funding it at levels that will let it thrive.

We are in the process of finalizing technical corrections to the hours of service portion of the Rail Safety Improvement Act. And I would like to urge the subcommittee to seriously consider adopting them. Specifically, these corrections establish the 10-hour call for duty, and a reduction of excess limbo time, which will greatly reduce fatigue, improve safety, and ultimately improve the quality of life for our members.

In summary, the BLET believes although Congress has a place in broadly defining areas of safety that must be addressed as a matter of public policy, regulation is the best—excuse me—regulation is best written in a fashion that allows for those with a stake in the rules to have a hand in their creation and amendment. Railroad regulation should be crafted, revised, or removed only after careful consideration by the subject matter experts from the railroad industry.

So, thank you for your time, and I will be happy to answer any questions that you may have.



Mr. SHUSTER. Thank you very much, Mr. Bruno. And next, Mr. Leonard Parker, the national legislative director for the Brotherhood of Railroad Signalmen. Mr. Parker, please proceed.

Mr. PARKER. Mr. Shuster, Ranking Lady Brown, we thank you for inviting BRS to participate in this hearing. The Brotherhood of Railroad Signalmen is highly supportive of development of high-speed passenger rail, expansion of intercity passenger rail, and expansion of commuter rail service. This is a long time coming, and we are pleased that the Congress and the administration have recognized that rail is an underutilized resource that can be utilized to provide safe, efficient, effective, and environmentally sound passenger transportation.

But it is important to recognize that safe and effective passenger rail transportation depends on highly skilled and professional railroad workers, many of whom, especially signalmen, are certified to perform various forms of railroad work.

Railroad work involves unique skills and training, and sometimes special certification. That is certainly true of signal work. Consequently, railroad workers on the major freight railroads, Amtrak, and the major commuter lines is performed by railroad workers in the traditional crafts recognized by the NMB.

Professional railroad employees have a proven record of accomplishment of successful work on joint-owned commuter rail systems. Furthermore, professional railroad employees are responsible for the operating, dispatching, construction, rehabilitation, and upgrade of freight lines, and signal systems used in commuter passenger service throughout the United States. Especially in the northeast, rail workers operate and maintain the major commuter rail systems MBTA, Metro North, Long Island Railroad, New Jersey Transit, SEPTA Metro.

For the same reason, work on new high-speed rail operations and expanding intercity passenger rail operations should be done by railroad workers. Certainly persons who do work for the higher speed passenger operations, whether train movements, control track and signal work, equipment work, or administrative work, should be no less skilled and no less qualified than persons who do such work involved with the movement of cargo.

The ability of entities that do work connected to high-speed rail operations to hire qualified employees to perform their work will depend on those entities being rail carriers. Because rail carriers will not accept jobs—rail employees will not accept jobs with entities that are not rail carriers, since railroad workers who leave career employment lose substantial vested railroad retirement benefits, and the rights and protections provided under Federal railroad laws.

There are some who want to enter the railroad industry and perform work on railroad lines, but who seek their own economic advantage by attempting to perform railroad work without being rail carriers under the Federal railroad laws, and by using workers who do not have the rights and benefits mandated by the Federal railroad laws. The race to the bottom must be resisted.

While certain small commuter railroads have engaged in the—railroad work among multiple contractors who are not rail carriers, this unfortunate practice is not followed on any of the major freight

railroads, major commuter railroads, or Amtrak. All those entities recognize that integrated railroad operations and a single-carrier operating employing railroad workers to perform traditional railroad work is the safest and most effective and efficient method of railroad operations.

As the Federal Government encourages and helps fund the promotion of high-speed and expansion of intercity passenger rail transportation, it should make sure that it is providing real rail transportation that employs real rail workers, not knock-offs. We are the real McCoy, rail transportation that utilizes real rail workers. To the extent that Amtrak is used to provide new service, they must be rail carriers who employ workers covered by the Federal railroad laws.

Talk of privatizing the northeast corridor passenger rail service ignores recent history. The current private freight railroads once provided passenger service, too. Freight and passenger service were not separated. Passenger service was part of the common carrier obligation. However, the freight railroads were dramatically losing money over the passenger service, and could not continue to provide the service. Amtrak was created because the private sector could not provide passenger rail service. The freights were relieved of their common carrier obligation for passenger service.

In return for allowing Amtrak to operate on their lines, intercity passenger service is provided by Amtrak, not because the government sought to provide this service, but because the private sector was unable to do so.

The PRIIA all—PRIIA provides the collective bargaining agreements applicable on a railroad whose right of way is being used to remain in full force and effect, and that the rights, privileges, and benefits of railroad workers be preserved. This is a mandate that the employees who perform work related to high-speed rail and intercity passenger rail supported by the Federal railroad funds must be railroad workers covered by the RLA or FELA. This mandate must be continued. Thank you.

Mr. SHUSTER. Thank you very much, Mr. Parker. And next, Mr. Rick Inclima, who is the director of safety for the Brotherhood of Maintenance of Way Employes. Mr. Inclima, please proceed.

Mr. INCLIMA. Good morning, Mr. Chairman, and thank you, Ranking Member Brown, and members of the subcommittee. My name is Rick Inclima. I am the director of safety for the Brotherhood of Maintenance of Way Employes Division. On behalf of our 35,000 members, thank you for holding this hearing on regulatory reform.

In the short time available this morning, I would like to touch on just a few regulatory issues here. You have already heard about the Railroad Safety Advisory Committee. It was created in 1996 to develop a consensus by all interested parties for FRA rulemakings. It has been very successful in mitigating regulatory burdens upon the industry. Railroads and safety have benefitted from regulations developed through the RSAC. Regulatory review in the railroad industry is a constant and ongoing consensus-based effort between labor, management, and government, and we encourage this subcommittee to continue its support for the RSAC process.

Regarding DOT/OSHA jurisdiction, it is vitally important to maintain the current shared jurisdiction between OSHA and DOT over hazmat safety. The issue of shared jurisdiction has long been established between FRA and OSHA. In its March 1978 policy statement, FRA determined that it should not attempt to regulate areas already covered by regulations issued by OSHA. The 1978 policy statement established the current complementary jurisdiction between FRA and OSHA, and continues to guide the shared jurisdictional authority which has served the safety needs of the industry and the public for well over 30 years.

It would be an ironic mockery of regulatory reform to eliminate the role of OSHA in protecting worker safety and forcing DOT to expend considerable taxpayer dollars to hire and train personnel, develop requisite experience, and promulgate rules to fill the resultant regulatory void.

Regarding DOT training grants, the National Labor College, here in Silver Spring, Maryland, has provided over 28,000 rail workers with comprehensive, quality hazardous material training since 1991. This program continues to be funded by non-DOT grants and private grant sources, and is considered a model of worker training.

In 2008, the DOT awarded a train-the-trainer grant to the college to train hazmat instructors. Under this competitive grant proposal and award, 221 DOT regional trainers completed hazmat instructor's training. In turn, these regional trainers have already delivered quality hazardous material training to over 2,600 additional rail workers back at their home locations, including mixed group of frontline rail workers and rail management, local firefighters, EMTs, and emergency personnel. The DOT grant program is funded by hazmat registration fees, not through Federal tax dollars. It does not add to the Federal deficit.

We implore the subcommittee to continue its support for this highly successful and nationally recognized worker training program.

Concerning hazardous material regulations, comprehensive hazmat regulations are necessary to protect the public. The railroads, under oath, have stated to regulators that some cargoes are too dangerous for them to carry safely, given their cost benefit analysis. However, the railroads themselves have never advocated that less regulation is the solution to these problems.

In closing, Mr. Chairman, our written testimony also addresses other areas of regulatory oversight. Labor has also recently submitted substantial comments directly to DOT regarding issues of regulatory review and regulatory reform. With your permission, Mr. Chairman, we would like to submit additional information to the record.

The DOT, through the FRA and the RSAC, has made every effort not to unduly burden railroads through excessive regulations. If the FRA is erred in this regard, it has been on the side of under-regulating. The Rail Safety Improvement Act was a congressional declaration of that fact. Railroad regulations are sufficiently flexible, are subject to frequent and comprehensive review through the RSAC, and contain liberal waiver provisions that render complains about over-regulation largely moot.

Mr. Chairman, thank you and the subcommittee for the opportunity to appear before you today.

Mr. SHUSTER. Thank you very much, Mr. Inclima. And if you have additional information for the record, we will be happy to take that and put it into the record.

Mr. INCLIMA. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. Next, Mr. Gary Self, who is the vice president and general manager of Nelson Brothers, Incorporated, and he is representing the Institute of Makers of Explosives.

So, Mr. Self, please proceed.

Mr. SELF. Chairman Shuster, Ranking Member Brown, and members of the subcommittee, thank you for this opportunity to share our efforts to comply with the requirements imposed on our industry by PHMSA by the special permits program.

It is a cautionary tale that underscores the grave concern the commercial explosives industry has with the agency's use of its special permit authority to mandate unproven and untested technologies on motor vehicles transporting these materials. PHMSA has power to modify special permits for new conditions without the cost benefit analysis that would be required of rulemaking.

In August of 2009, PHMSA issued notices to holders of special permits that authorized bulk explosives vehicles that it was modifying the conditions of the permits, including one change requiring a battery disconnect switch activated from a remote location.

Between August and December 2009, the battery disconnect standard was rewritten 3 times. In January 2010, Nelson Brothers began the process of trying to comply. We wanted to pursue an installation schedule to meet a January 1, 2011, compliance deadline that would be the least disruptive to our operations. We were able to identify only one foreign sourced supplier of a battery disconnect system that promised to meet the performance standard stated in the special permit.

Company and OEM engineers and disconnect manufacturers and technicians were involved in the initial installation of this high-end after-market system. After successful testing, all affected company vehicles were retrofitted with a disconnect system at a cost of approximately \$5,000 per vehicle.

Initial problems began in January of 2011 with the excessive corrosion around the poles of the constant duty solenoid. Replacement of solenoids and protection of both poles appeared to address these problems. A program was put into place to protect all solenoid poles at subsequent truck inspections.

On January 27, 2011, moisture build-up in a 3-pin control cable of the battery disconnect caused the system to fail, resulting in a non-controlled shut-down of the truck traveling on a public highway. A review of the incident indicated that extra dielectric grease was needed in the three-pin connector to protect it from moisture. Again, a plan was put into place to add the dielectric grease during the next vehicle inspections.

Five days later, a second vehicle with this system experienced failure and uncontrolled shut-down. The failure was traced to a butt connector that corroded and came loose. The vehicle was traveling, again, on a public highway. In both cases, the drivers were able to keep the vehicles under control, helped by good weather

and a straight, uncongested roadway. But the risk posed to the public and to company personnel caused us to immediately disconnect the retrofitted system from all vehicles.

Nelson Brothers engaged in a good faith effort to comply with PHMSA's battery disconnect standard in advance of the January 1, 2011, deadline. PHMSA engineers have been unable to show how they would configure a disconnect system to comply with their own standard. We submit that the type of sophisticated shut-down systems envisioned by PHMSA and the modified special permits are not advanced enough to be safely and reliably used on today's trucks. Furthermore, agency efforts to impose a remote or self-actuated or multiple battery disconnect requirement without major research places the public at grave harm.

We have learned over the years to pay attention to close calls or near misses. These warning signs should not be ignored by PHMSA or Congress. Congress never intended that special permits be a long-term placeholder for permanent regulation. Rather than continue the rewriting of the effective special permits to impose unproven technology, PHMSA should be focused on incorporating into the regulations current industry standards that have demonstrated over decades the safe operation of bulk explosives.

We welcome your help to stop PHMSA's demands to retrofit vehicles carrying explosives with untested technology.

Thank you, sir.

Mr. SHUSTER. Thank you very much, Mr. Self. Thanks for coming here today.

Next, Mr. John Conley is the president of the National Tank Truck Carriers. Mr. Conley.

Mr. CONLEY. Good morning, Mr. Chairman Shuster, Ranking Member Brown, and members of the committee. My name is John Conley. I am president of National Tank Truck Carriers. My association represents trucking companies that deliver materials in bulk, such as petroleum products, chemicals, food products, and cement. Our membership also includes companies that provide equipment and services to the tank truck industry.

I first would like to commend the safety professionals at the Pipeline Hazardous Materials Safety Administration, and their predecessor agency, with whom I have worked for over 35 years. As Chairman Shuster has observed, the United States is served by a very safe hazardous materials transportation network. This system that is copied by countries around the world is a credit to and verification of the close cooperative relationship between the agency and the industry in our shared goal of hazardous materials incidents reduction or elimination.

We sometimes disagree on how to meet that shared objective, and I am here today to discuss two issues that cause my members real concern.

The first issue involves the transportation of flammable materials in the loading line of cargo tanks, the so-called wet lines issue. Certainly this is not a new topic to veteran members of this committee.

The second issue concerns a rulemaking from PHMSA which I believe would compromise hazardous materials transportation regulatory compliance enforcement, and safety. That rulemaking,

HM-241, would result in severely restricted public access to the regulatory process, and to currently applicable regulatory requirements in the hazmat regulations.

NTTC appreciates the work that both the Chairman, and especially Ranking Member Brown, of this subcommittee devoted to the wet lines issue in the 111th Congress. This issue has now taken on a life of its own, as PHMSA recently published another proposed rulemaking to ban wet lines. Unfortunately, in an attempt to adapt economic cost benefit facts to fit a failed theory, PHMSA bases much of its HM-213D on an unproven manual purging device available only from one commercial provider. To our knowledge, no carrier has purchased or tested this manually operated device, which is supported only by the claims of its manufacturer. Our analysis of this recent wet lines ban reveals that its cost far exceeds its potential benefits.

We also remain concerned that any retrofit requirement could be detrimental to the safety of the workers in the tank truck facilities and, therefore, ask this committee to mandate a study of the wet lines issue while enjoining PHMSA from finalizing the rule proposed on January 27th. Such a study should consider the actual scope of the perceived problem, the advantages and disadvantages of possible operational solutions to the perceived problem, including the potential increased risk of exposure to shop workers, and whether or not the issue should be addressed at the petroleum loading rack, or in the thousands of pieces of equipment operated throughout the country.

The second issue I would like to briefly address is a PHMSA rulemaking that would turn over the cargo tank rule-writing function it now so competently exercises in title 49 parts 178 and 180 to third-party service providers. The cost-free and immediate availability of the current regulations and, more importantly, ready access to the open regulatory process would be severely impacted for no safety reason.

The existing process would be replaced by a closed process where private entities develop copyrighted materials to be adopted by the agency, and purchased by the regulated public and enforcement communities. This would cost up to \$600 for a carrier, law enforcement person, or anyone else to have access to publications and regulations that are currently in the regulations and free to the public.

I would be happy to answer any questions when the time comes. Thank you, sir.

Mr. SHUSTER. Thank you very much, Mr. Conley. Thanks for coming today.

Next, Ms. Mary Pileggi, who is North American logistics manager for DuPont, and she is here on behalf of the American Chemistry Council. And I must ask you. Are you any relation to the majority leader of the Pennsylvania State Senate, Don Pileggi?

Ms. PILEGGI. No, I am not.

Mr. SHUSTER. OK. It would have been a bonus for you, if you were.

[Laughter.]

Ms. PILEGGI. OK. I change my answer.

Mr. SHUSTER. Please proceed.

Ms. PILEGGI. Thank you, Chairman Shuster, Ranking Member Brown, and members of the committee. My name is Mary Pileggi, and I am here to testify on behalf of the American Chemistry Council. I am the North America logistics manager for DuPont. I am responsible for freight transportation in the United States and Canada.

DuPont purchases approximately \$550 million in freight transportation. So you can understand why the topic of today's hearing is of great importance to us, as well as other members of ACC.

Chemical producers and their customers rely on carriers to deliver chemicals where they are needed, from water treatment plants to farms to factories. Because some of the materials that we ship are hazardous materials, we work with our transportation partners to find ways to build upon an already impressive safety record. Through ACC's Responsible Care initiative, member companies and our partners are committed to continuous transportation safety improvement. We have invested billions of dollars in training, technology, and tank car safety.

The Federal Government has and must continue to play a central role, when it comes to ensuring the safe transportation of hazardous materials. Congress wisely established a uniform national regulatory system under the Hazardous Materials Transportation Act. The goal is not to prevent the movement of these materials, but to ensure they are delivered safely, securely, and reliably. This program has worked well in making hazmat transportation safe for workers, our communities, and emergency responders.

Congress will soon consider legislation to reauthorize the act. ACC would like to go on record in strong support of this regulatory program which ensures that all aspects of hazmat transportation are consistent across the Nation.

ACC is concerned about one aspect of DOT's administration of the program. Special permits allow safety-based variation from DOT's regulation. Special permits can only be granted when DOT finds at least an equivalent level of safety. With special permits, industry gains flexibility with no loss of safety to the public, and DOT learns whether new procedures and technologies can be incorporated into its rules.

Unfortunately, DOT has recently imposed onerous paperwork barriers that have slowed the approval of special permits, and increased cost to industry. We urge Congress to direct DOT to rescind those complex and burdensome interpretations.

ACC also supports a sensible approach to implementing the Rail Safety Improvement Act, which will deploy new technologies, like positive train control. PTC and other risk mitigation measures can advance safety and enhance productivity throughout our national rail system. DOT, and possibly Congress, will reconsider important aspects of the PTC rule. We support exploring less burdensome approaches. But as that effort moves forward, whether through regulation or legislation, any changes to the PTC rule must remain consistent with the common carrier obligation. It also must allow producers to ship products where customers need them, now and into the future.

In addition, it is critically important to ensure that the cost of implementing PTC is allocated fairly. The country needs to main-

tain a safe and reliable system of hazardous material transportation that is governed by uniform national rules. The challenge is to ensure that all stakeholders work together so this system continuously improves.

Chairman Shuster, Ranking Member Brown, and members of the subcommittee, we look forward to working with Congress and the DOT to achieve this goal.

Mr. SHUSTER. Thank you very much, Ms. Pileggi.

And, before we go to our final witness, would Mr. Fauver please come back to the table? The Ranking Member has a question for you.

I just want to remind the Ranking Member he works for PennDOT, not FDOT, so take it easy on him.

[Laughter.]

Ms. BROWN. That is a good thing.

Mr. SHUSTER. And we are going to have some questions for those that are still in the room, if there are questions for some, after we get done with Mr. O'Connor, Mr. Kevin O'Connor, who is the assistant to the general president for the International Association of Fire Fighters.

Mr. O'Connor?

Mr. O'CONNOR. Thank you very much, Chairman Mica, Subcommittee Chairman Shuster, Ranking Member Brown, and members of the committee. My name is Kevin O'Connor, and it is my privilege to lead the governmental and public policy division of the International Association of Fire Fighters. But more importantly for this conversation, I have experience as both a career and a volunteer firefighter, and specific experience in hazardous materials response.

During my career in Baltimore County, Maryland, I had the unique opportunity to respond to one of the worst train disasters in American history, the tragic Amtrak accident on January 4, 1987, in Chase, Maryland. I was assigned a hazardous materials company in the southeast portion of Baltimore County, and responded to several hundred hazmat incidences over my career.

My testimony today will focus on a very narrow, albeit important, aspect of this conversation on railroad, pipeline, and hazardous material safety, and that is protecting both our communities, making sure our citizens are safe, and doing that through ensuring that firefighters in communities large and small, career and volunteer, have adequate training to respond to these very, very complex incidences and responses.

Let me first thank you both, Mr. Chairman and Ranking Member Brown, for your service in the Congressional Fire Services Caucus. We are in town meeting today. And, in fact, this afternoon there are educational components on this very topic.

In spite of our best efforts and our friends' in industry, we all recognize that accidents will occur. In fact, there are over 350,000 responses to hazardous materials incidents across the country on an annual basis. And I am sad to report that in its second needs assessment of the U.S. fire service, the U.S. Fire Administration reports that 38 percent of all fire fighters do not have any training with respect to hazardous materials response. More troubling, 29 percent of all fire departments admit that they do not provide any



training to their first responders in this very, very important and life safety issue.

Beyond initial training, OSHA also requires that people trained in hazardous materials response are re-certified and have annual re-certification training to keep up their skills and competency. I am very happy to report that, through this committee, and through the Department of Transportation's hazardous materials emergency preparedness grant program, the International Association of Fire Fighters has been able to address this very serious problem.

We have a very unique and effective train-the-trainer program, which is funded through DOT. Essentially, it is a peer-to-peer program, where firefighters actually go out into the communities and train other firefighters in the train-the-trainer type model. The program has received rave reviews from GAO and anyone else who has looked into this program. It is a very effective program to ensure that revenue is appropriately expended. We get the most bang for our buck through this program.

Over the years, the IAFF has been able to train directly 3,000 providers who have, in turn, trained over 70,000 first responders to the operations level, so that their communities have this modicum of protection. The program is provided free of charge to any jurisdiction. If a jurisdiction seeks this training for any of its responders, it simply asks the IAFF, we go out and provide the training. What we ask is that, in any reauthorization, this program be funded to its current level. It is a successful program. It works in large cities and small communities.

We have two other related requests with respect to this program. First, OSHA 1910.120 specifies various levels of training for hazardous materials, from awareness level all the way through incident command. We feel that it is appropriate to be very specific that any training to first responders rise to the level of operations. That is, when a firefighter gets on the scene or an emergency responder, they know what to do, and they can adequately respond.

The third ask that we have is this program right now is limited to train the trainer. While that is very effective on an aggregate basis to provide operations training, we would like to see the program expanded so that we can do direct training for the technician level, which is the higher level of response for communities.

Thank you very much, and I stand ready to answer any questions.

Mr. SHUSTER. Thank you very much, Mr. O'Connor. Thanks for coming today.

Also, I would like to ask that Mr. Hamberger please come back to the table.

Mr. HAMBERGER. [Off mic.]

Mr. SHUSTER. Well, you know, you are Jay Rockefeller's favorite lobbyist.

[Laughter.]

Mr. HAMBERGER. Thank you, sir.

Mr. SHUSTER. And Mr. Steve Klejst, who is with the NTSB, who is going to sit in for Mr. Hart? Thank you.

And remember, he is PennDOT, not FDOT, so—and I recognize the Ranking Member for a question.

Ms. BROWN. Thank you. And part of the bill is to just wipe out Florida DOT, at least.

I have a, first of all, a unanimous consent to include a statement by the Air Line Pilots Association on this hearing, for the record.

Mr. SHUSTER. Without objection, so ordered.

[The information follows:]

**WRITTEN SUBMISSION OF**  
**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (ALPA)**  
**BEFORE THE**  
**SUBCOMMITTEE ON RAILROADS, PIPELINES,**  
**AND HAZARDOUS MATERIALS**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
**U.S. HOUSE OF REPRESENTATIVES**

**April 12, 2011**

**“REDUCING REGULATORY BURDENS AND ENSURING  
SAFE TRANSPORTATION OF HAZARDOUS MATERIALS”**

Air Line Pilots Association, International  
1625 Massachusetts Avenue, NW  
Washington, DC 20036  
(202) 797-4033

**STATEMENT OF THE**  
**AIR LINE PILOTS ASSOCIATION, INTERNATIONAL (ALPA)**  
**BEFORE THE**  
**SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
**U.S. HOUSE OF REPRESENTATIVES**

**“Reducing Regulatory Burdens and Ensuring  
Safe Transportation of Hazardous Materials”**

**April 12, 2011**

The Air Line Pilots Association, International (ALPA) represents more than 53,000 passenger and all-cargo airline pilots and has long advocated for improved transport requirements for lithium-ion and lithium-metal batteries. On two separate occasions in 2009, we appeared before this Subcommittee and cited numerous incidents wherein lithium batteries, carried either in the cabin of passenger aircraft or shipped as air-cargo, were involved in fires aboard aircraft. Unfortunately, the situation has not improved since that time. In fact, fires involving lithium batteries on airplanes continue to occur, destroying property and tragically, may have contributed to the death of two pilots flying for a U.S. all-cargo company.

The U.S. House of Representative’s recently passed FAA reauthorization bill, H.R. 658, contains a provision added on the House floor, Section 814 titled “Air Transportation of Lithium Cells and Batteries.” This section prohibits the Federal Aviation Administration from issuing or enforcing “any regulation or other requirement regarding the transportation by aircraft of lithium [batteries], if the requirement is more stringent than the requirements of the International Civil Aviation Organization.” ALPA strongly disagrees with this provision for the simple reason that these batteries are known to be capable of self-initiating intensely hot fires which airline pilots and/or onboard fire suppression systems may be incapable of extinguishing, and which could lead to the loss of an aircraft and everyone onboard.

Withholding a needed safety improvement on the basis that ICAO has not adopted it ignores several essential facts. The U.S. has historically led the world – including ICAO – in the creation and adoption of safety enhancements. For the U.S. government to defer to an international body on whether it is appropriate to take necessary precautions against a proven hazard which is demonstrably capable of causing loss of life and property represents a setback to our country’s standing in the aviation world. There are numerous examples of Federal Aviation Regulations (FARs) which exceed ICAO standards. If the U.S. government were to extend the philosophy expressed in Section 814 and revise our FARs in a manner to not exceed the stringency of ICAO standards, our aviation regulations would be weakened in a number of areas.

ALPA is aware of the arguments concerning the costs associated with safeguarding lithium batteries during air transport. Pilots want and need for their airline employers to be successful, and carrying cargo is a significant factor in airline profitability, but our members are opposed to betting their lives on making it home safely in exchange for haphazardly carrying lithium batteries that have a history of self-igniting and are capable of creating intensely hot fires onboard airplanes. We would reiterate that there are a myriad of industries – including, for example, those that manufacture household paint or dry ice – that both safely and profitably ship hazardous cargo under the full scope of dangerous goods regulations.

#### Background

In early 2010, responding to a perceived need for bolstered regulations governing the shipment of lithium batteries, the U.S. Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) intended to amend pertinent requirements in the Hazardous Materials Regulations. ALPA has publicly supported the majority of the proposed rule and would respectfully reiterate for the members of this Subcommittee the facts which substantiate our position on this issue.

While ALPA is not advocating for enhanced restrictions on the types of items individuals may personally carry on board aircraft, our concern remains focused on lithium batteries contained within equipment and/or transported as air cargo. If these shipments either initiate or become involved in a fire, they pose a significant risk to the safety and well-being of an aircraft and its occupants. While it is true that a fire involving a limited number of lithium-ion batteries may be controlled by the active fire-suppression system on an aircraft, Federal Aviation Administration (FAA) testing has shown that lithium metal batteries are unresponsive to Halon, the traditional extinguishing agent used aboard aircraft.

Unfortunately, lithium-ion and lithium-metal batteries remain excepted or exempt from many of the provisions of the Federal hazardous material regulations and the International Civil Aviation Organization (ICAO) Technical Instructions (TI) which regulate the transportation of dangerous goods (DG), including lithium batteries, by air.

The full regulation of lithium batteries as DG would have a significant positive impact on the safety of the air cargo supply chain. Improved packaging standards would help prevent damage to shipped batteries. Dangerous goods labels would ensure worldwide recognition that shipments have the potential to cause an incident if mishandled. An acceptance check would provide an opportunity to detect package damage or non-compliance with the regulations. Pilot notification through the notice to the captain (NOTOC) would increase the awareness of flight crewmembers to the presence of DG and allow them to communicate hazard information to emergency responders in the event of an incident and better position them to make critical decisions related to handling an in-flight emergency.

While we recognize that the risk associated with a single battery in a shipped package is low, we caution against permitting exceptions to the DG regulations for shipping small batteries based on this logic, as there is currently no regulation which prohibits hundreds or thousands of these

items from being consolidated in a single shipment. It is only through full regulation of the shipment of small batteries as DG that the quantity of batteries stored at a single location in an aircraft or in a single cargo compartment can be addressed. In the absence of such regulations, lithium batteries are handled as general freight and airline employees, including pilots, are often unaware of the total quantity of batteries offered for shipment or the risk that they pose to the aircraft.

Given that FAA continues to receive reports of fires directly related to lithium battery shipments and lithium batteries contained within equipment, we cannot afford to wait to fully regulate lithium batteries as DG. Every day we delay, people and property are being exposed to the potential danger of an in-flight fire that neither the aircraft's fire suppression system nor the flight crew may be able to extinguish. Immediate action is necessary to ensure the safety of lives and property involved in air cargo operations conducted on passenger and cargo aircraft.

#### ICAO Standards are Inadequate

ALPA strongly disagrees with the argument that the ICAO Dangerous Goods Technical Instructions are adequate for transporting lithium batteries by air. Current ICAO regulations except consumer-sized lithium batteries from many provisions of the regulations normally applied to other dangerous goods, resulting in a lower regulatory standard for these shipments. Specifically, the ICAO regulations for lithium batteries are inadequate in the following areas:

1. *No Required Notification to the Pilot in Command (NOTOC) That Lithium Batteries Are Being Transported On Their Aircraft.*

The knowledge that lithium batteries may be involved in an on-board incident or fire could influence a pilot's decision-making process, potentially impacting the selection of a diversion airport or other emergency actions needed to be taken. While the cause of the September 2010 fire aboard a UPS 747 that crashed near Dubai and fatally injured its two pilots has not yet been conclusively determined, it is known that large quantities of lithium batteries were carried as cargo on-board the aircraft. This information was not provided to the crew operating the flight. Had it been, that knowledge may have influenced their decision to return to their departure airport, as opposed to selecting a closer alternate airport at which to land. Providing information about the presence and quantity of lithium battery shipments to the flight crew also enables them to transmit valuable information to first responders in the event of an incident, aiding in the proper emergency response. The full hazardous materials regulations require notifying the flight crew of the presence of dangerous shipments, a system that has worked well over many decades. It is indefensible that a flight crew would be informed of a shipment of five pounds of flammable paint, but would have no knowledge of thousands of lithium batteries on a pallet in the cargo compartment, as current regulations now provide.

2. *No restriction on the quantity of lithium batteries on an aircraft.*

Under ICAO provisions for consumer-sized lithium batteries, there is no limit as to the number of lithium batteries that may be transported on an aircraft. It is permissible under current regulations to fill the entire cargo compartment of a passenger aircraft with lithium-ion batteries. The National Transportation Safety Board (NTSB) has recommended that the number of lithium batteries at a single location be restricted in order to improve the effectiveness of firefighting efforts should an incident occur.

3. *No Restriction on the Loading Location of Lithium Batteries.*

ICAO provisions allow lithium batteries to be loaded wherever cargo is permitted on an aircraft. Testing by the FAA Technical Center has determined that a fire involving lithium-ion batteries responds favorably to the Halon system in a Class C cargo compartment. ALPA and the NTSB have recommended that lithium-ion battery shipments be loaded in Class C cargo compartments. In order to adopt this recommendation, lithium-ion battery shipments must be fully regulated as hazardous materials, not excepted as in the ICAO provisions.

4. *Lithium-Metal Batteries Are Permitted On Passenger And Cargo Aircraft By ICAO.*

While the United States has prohibited carriage of lithium-metal batteries not installed in equipment on passenger aircraft, no such limitation exists in the ICAO provisions. The FAA Technical Center has found that lithium-metal battery fires do not respond to Halon, and in November 2010 stated, "No safe method for shipping lithium-metal cells is currently available." Yet, ICAO provisions allow unlimited quantities of these batteries on both passenger and cargo aircraft, without notifying the flight crew of their presence.

5. *No Dangerous Goods Labels Are Required.*

ICAO provisions for carriage of shipments of lithium batteries provide an exception for placing a dangerous goods label on the packaging. This label is designed to increase awareness of their presence by the ground handling staff while loading and unloading the aircraft, reducing the likelihood of a shipment being damaged or a damaged shipment being placed on an aircraft. Although not readily apparent, this is a highly significant issue since testing has shown that damage to a lithium battery shipment may, in many cases, result in a fire hours after the damage occurred. Requiring a label would increase awareness of and allow for safer handling of the shipment.

6. *No training is required for shippers/handlers of lithium batteries.*

While many of the incidents involving lithium battery shipments result from non-compliance with current regulations, in most cases, this non-compliance has resulted from a lack of knowledge or incorrect application of the regulations, as opposed to the willful evasion of requirements. Fully including lithium batteries under hazardous

materials regulations would reduce the complexity of the current regulations by eliminating a large number of exceptions relating to their shipment. Requiring shippers and handlers to be trained in mandatory compliance measures would result in a reduced number of incidents. Additionally, it would provide for improved oversight of shippers and handlers by enforcement agencies, and facilitate their ability to inspect shipping facilities and ensure that training and practices are in compliance with all regulations.

#### Recommendations

ALPA believes the U.S. must now take positive action beyond that required by ICAO to ensure the promulgation of measures which will protect the public, flight crewmembers, non-crewmembers traveling on cargo aircraft, and others involved in the air-cargo transportation system from the hazards currently associated with the shipment of lithium batteries by air.

Striking the language proposed in Section 814, Air Transportation of Lithium Cells and Batteries, is necessary for improving the overall safety of air cargo operations and the protection of lives and property whenever lithium batteries are moved through the air transportation system. Urgent action is needed now to bring these dangerous materials into the same regulatory framework that safeguards the shipment of hundreds of other hazardous materials in the United States and around the globe. While there may well be reasons to reduce regulations without a clear safety benefit, the air transport of lithium batteries clearly does not fall in that category and these regulatory protections must be promulgated immediately.

ALPA appreciates the opportunity to testify on this important safety matter.

# # #



Ms. BROWN. My question to you, sir. We talked about the RRIF loan. And you indicated that some DOT agencies, if you apply for a loan, you have already gotten some permits, and they won't accept that one. And we heard this testimony when we went to California and different places, that that was one of the problems that we are having. We have over \$300 billion, and I don't think we have lent out but about \$100 billion. To me that would be one way, with the shortness of funds, to get some of our communities working.

What are some of your recommendations, additional?

Mr. FAUVER. Well, I think my specific comment was in regard to NEPA, and NEPA coordination and NEPA clearance.

Ms. BROWN. Right, right.

Mr. FAUVER. We have got—

Ms. BROWN. How can we better—

Mr. FAUVER. There is a rule within USDOT that encourages the separate administrations to coordinate those activities.

But, in my opinion, NEPA is one law. It applies across the board. If one Federal agency is going to oversee and provide clearance for NEPA, then—and it is the same project, then the other Federal agencies should automatically be able to approve that, or be able to accept that approval or that clearance, and be able to move on.

The difficulty, I think, compared to 20 years ago, is that we are seeing more and more mixes of Federal funds from different agencies involved in projects. We are seeing Federal Transit Administration's funds, Federal Highway Administration funds, and Federal Aviation Administration funds, and Federal Railroad Administration funds all being mixed together to come up with an intermodal project. And if we start with one source of funds and get environmental clearance and then we have to go back and get the other agencies to independently approve, we have experienced 2-year delays in some cases on being able to advance projects.

So, I think that, in reauthorization, if it was just—if it was made very clear that if one agency approves the project then—and you get—from one agency, then it covers the whole project across the entire funding spectrum.

Ms. BROWN. I would like some additional information on that—

Mr. FAUVER. Sure.

Ms. BROWN [continuing]. Particular area, because we have heard testimony around the country on that.

My question is on positive train control. I have heard from the railroads, both publicly and privately, that the implementing of the positive train control is very expensive. We want safety, but based on the cost, there are other measures.

And I know that we are negotiating, but you all are not very comfortable with these other measures. Or can you all discuss that a little bit for us, that—you know, I am not trying to change anything that is going on in the courts, I just want to know where we are.

Mr. HAMBERGER. We are, as you so rightly point out, Congresswoman Brown, in discussions with the Federal Railroad Administration, not the NTSB. And I appreciated very much the testimony of Mary Pileggi, who I am sure has now discovered a relationship to the majority leader of the senate in Pennsylvania.

Ms. BROWN. That is Pennsylvania.

Mr. HAMBERGER. Yes, and on behalf of the ACC, indicating that perhaps it is time to take a look at are there other approaches that can address the overall risk of an accidental release of TIH, not just the preventable—PTC preventable risk, but the overall risk profile.

Only 4 percent of the over-the-road accidents in the freight rail industry are PTC-preventable. Now, they are horrific when they happen. But we do not really run trains into one another too often. And so, what is a major cause of over-the-road accidents would be mechanical failures or track and structure failures. And so, being able to focus more on the overall risk profile, rather than just the PTC-preventable profile, we think, would improve safety, at least as much as installing PTC, and might do so in a more effective, efficient way.

Ms. BROWN. Yes, sir?

Mr. KLEJST. Yes. The positive train control system does have many benefits—

Ms. BROWN. The microphone, sir, is it on?

Mr. KLEJST. Yes.

Ms. BROWN. OK.

Mr. KLEJST. The light is on. The positive train control system does have significant benefits to railroad safety. It provides a safety overlay for some of the accidents that we have heard through the vice chairman's testimony today in derailments and collisions.

It also provides safety overlays with respect to roadway worker incursions, temporary and permanent speed restrictions. Whenever there is a situation where a person is involved in the operation of a train, there always exists the potential of a human error. And this PTC system will provide an additional safety overlay to eliminate or minimize the impact of these types of accidents.

Ms. BROWN. I think—and this is my last comment—one of the—some of the testimony said that it was what—human error, and it would be better if we made some adjustments in that, as opposed to some of these other measures that we are recommending.

Mr. KLEJST. Well, the human error element, while the railroads are working diligently to have—for training programs, rules and procedures, there is always present the possibility of an error made on the decisionmaking process of the locomotive engineer. And the positive train control system, when implemented on a particular territory, will provide that overlay and would, again, prevent these types of accidents when there is an error in the rate in which a locomotive engineer slows the speed of the train down, involved in a speed restriction, or misjudges distance when approaching a red signal or a stop signal that could result in a head-on collision, a side collision, or a rear-end collision.

Ms. BROWN. The accident that we had here, what—the problem was maintenance not doing the work on the brakes and other things. And it is supposed to be a grants program to help the transit system.

I had asked the question earlier what was the status of those grants and those monies to help those local systems. And I know it is not your agency, but could there be other things, in addition

to the positive train control, that we need to do, as far as making sure that we have the inspections on the systems?

Mr. KLEJST. The current regulatory environment has, through the Federal Railroad Administration, regulations for the condition of track, signal systems, and rolling stock, and other types of equipment—locomotives, for example. And the—when there is an accident that is related to any of these cause categories, the safety board investigates and makes recommendations, if appropriate, in each of these areas. So that is one of the areas that we do examine when we conduct investigations.

We do rely on rail carriers to follow through with the proper inspection and maintenance procedures and, when necessary, go beyond those, which—each carrier does have the opportunity to do so, should they desire to.

Ms. BROWN. Thank you. And thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. Yes, sir—

Mr. HAMBERGER. Might I just—

Mr. SHUSTER. Certainly.

Mr. HAMBERGER [continuing]. Emphasize for the record—I was thinking I was still back in the PTC here, and I want to emphasize, as I did a month ago, that when we are talking about these alternative risk reduction approaches, we are not talking about any passenger lines. We are talking about only for those lines which are required under the statute to be implemented with PTC because of the TIH shipments. And we are not looking at any other approaches where passengers are involved.

Mr. SHUSTER. Thank you very much. And could I excuse Mr. Klejst, excuse you from the table? I think we are done questioning you. And also Mr. Fauver, you can go back to Pennsylvania.

[Laughter.]

Mr. SHUSTER. And again, thank both of you for being here today. But I would also—no, Mr. Hamberger, you are still requested to be here at the table.

Mr. Simpson, could you come back to the table? Ms. Pileggi, if you come back up to the table? Mr. O'Connor, Mr. Paul, Mr. Timmons, and Mr. Stem.

And I believe, Mr. Larsen, I recognize you for 5 minutes for questions.

Mr. LARSEN. Thank you, Mr. Chairman. I just have one question. It might be a set of questions for Ms. Pileggi. I don't know anybody in Washington State named Pileggi, so we will start there.

Your testimony with regards to special permits—I recall from last year we had some hearings on this issue of special permits. I believe, as I remember, the problem that this committee faced was that PHMSA had authority to issue special permits, but they were not issuing them according to the process they were supposed to use. And I believe we had this discussion about safety effectiveness reviews, or something along those lines.

And so, the end result of this was PHMSA did, in fact, change their process because of—in part, because of concerns expressed by this committee that the special permit process seemed to be a little loose. And that—and so your testimony on page three, and your oral testimony sort of runs counter to what we thought we were looking into last year—it could have been 2 years ago; I forget the

exact date—and so I think we all agree special permits, as you know, are a win-win process. There is flexibility. But I guess we determine there is a little too much flexibility and not enough oversight from PHMSA on the special permit process.

Could you talk—could you help me understand if I am—if we have a conflict in how we see this?

Ms. PILEGGI. OK. I was not part of that particular discussion, or involved in that. I can speak from my experience from my company's working with special permits.

Processing time for the permits is a very lengthy period of time, where a renewal of a permit in the past may have taken hours or days. And given what you have just talked about oversight, maybe that is too short. But it shouldn't take anywhere from 6 months to a year, either, which is some of the situations that we have at hand. And I have heard some of my colleagues at other companies discuss it, as well.

When you talk about a fitness factor and how that is to be measured, I know ACC specifically asks that there be some type of a rulemaking where you could talk about fitness factors, and understand what the criteria are. That is something that we are specifically pointing to. One of the others was the factors for inclusion.

So, asking for the listing of all the locations that the permit is going to apply, well, when you have a transportation container that is being used, it is very difficult, unless you list every place in the country that it possibly could pertain to, in the application. So it makes it very difficult to go through the process in a timely manner, given some of these examples that I know that we have dealt with.

Mr. LARSEN. Yes. Well, I appreciate that. That is a little more detail for me than in your testimony, and that is good to hear. I just did not want to—I did not want this hearing to end without sort of exploring this—what we found last year, because I think what your testimony sort of outlined for us is—well, the way I read it and the way I heard it was, “Whatever you did last year, we want you to do the 180.”

Well, we tried the 180. And we had a hearing to find out we did not want to be there. And your testimony seemed to say, “Well, no, we do want to be there.” But I guess after a little—after hearing from you a little bit more, you have some concerns, but you are also saying there are some things that need to be done in the special permit process to ensure that special permits are issued to folks who should have them, but also that they are going to be complying with some rules that otherwise they were perhaps not complying with, which is why we had the hearings in the first place last year.

Ms. PILEGGI. That is correct. And I would suggest, since I am quoting from my experience, my company's experience—

Mr. LARSEN. Sure, yes.

Ms. PILEGGI [continuing]. ACC can follow up on that with you, to answer it fully.

Mr. LARSEN. Love to hear that. Thank you very much. Thank you, Mr. Chairman.

Ms. BROWN. Will the gentleman yield?

Mr. LARSEN. I have 42 seconds. I will yield them all to the Ranking Member.

Ms. BROWN. You know, I just wanted to remind you the hearings that we had, there were major problems in the permitting process. That is why we instituted additional regulations. So we are willing to work with you, but it was blanket permits, people that had them for years, there was no follow-up. It was a mess. So we corrected it, and I hope we did not overcorrect it. We are willing to revisit the issue, but we cannot go back to where we were. And the fact is the auditor general and the GAO gave horrible reviews of the permitting process.

Ms. PILEGGI. And, Ranking Member Brown, I do not think we are saying that we are asking you to go completely back. There is a middle ground—

Ms. BROWN. Yes.

Ms. PILEGGI [continuing]. That needs to be met for this to work.

Ms. BROWN. We are willing to work with you.

Ms. PILEGGI. Thank you.

Mr. SHUSTER. Thank you very much. And now I recognize for 5 minutes for questioning Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. And, members, if we could answer real quick, because I have got six questions here.

Mr. Hamberger, last Congress the freight railroads had a proposal for a tax credit for PTC implementation. Do you guys still support that?

Mr. HAMBERGER. Yes.

Ms. RICHARDSON. OK. And, Mr. Simpson, some witnesses have expressed concerns over the slow development of PTC technology. Can you talk about what your members are doing to ensure that this technology is readily available by the deadline of December 31, 2015?

Mr. SIMPSON. Oh, my lord, I am a government relations guy, not a communications signaling engineer. But they are cautiously excited about it. Understand the financial situation facing the railroads on the cost of implementation, but I think they think they can do it by the date certain. I would be happy to provide additional information from someone who—a communications signal engineer, as opposed to me.

Ms. RICHARDSON. So, Mr. Chairman, we would like to have that information submitted for the record.

Mr. SIMPSON. I would be happy to do that.

Mr. SHUSTER. Certainly.

Ms. RICHARDSON. Mr. Stem, the hours of service changes in 2008 law were designed to provide workers with more rest to reduce fatigue on the job. Do you think that this has been achieved? And, if not, why not? And what further changes should we consider?

Mr. STEM. Thank you, Ms. Richardson. Mr. Hamberger took my seat, as normal.

[Laughter.]

Mr. STEM. Hours of service changes that were made in the RSIA in 2008 were a step in the right direction. And if those hours of service corrections had been implemented as this committee passed them, they would have been a lot more appropriate than they are today.

Currently, the safety-critical employees that are operating the trains today have a totally unpredictable work schedule. The prior notification that would produce a predictable work schedule was moved to the end of service. So today, an employee has no clue within 40 hours when the employee will be expected to return to work. And the only hours of service improvement was a mandated 10 hours of undisturbed rest when he gets off duty.

And our suggestions are that logic fatigue science indicates it is only a simply change to move that required 10 hours of undisturbed rest to immediately preceding service, so that that safety-critical employee will have a predictable work schedule.

Ms. RICHARDSON. OK. Thank you. And Mr. Simpson, in your testimony, in support of Buy America requirements, you recommended improving transparency and accountability of domestic content requirements, as well as introducing incentives to increase domestic content. Could you please elaborate?

Mr. SIMPSON. Yes, I would be happy to.

Ms. RICHARDSON. On what specific incentives—

Mr. SIMPSON. First of all, there are—as I said, there are three different Buy America regulations: one for intercity passenger rail, one for transit, and now one for high-speed rail. And that seems relatively ludicrous to us, that if Amtrak is buying a car it is one regulation, but if Metro is buying a car it is a different one. And then, if a high-speed rail, it is a different one.

So, we ought to try to attain 100 percent, because we are strong supporters of Buy America. And, as I understand it, that is not currently attainable. But some companies can get close. The closer a company gets to getting to that 100 percent, it seems to us, that company ought to get some kind of reward, whether it is a tax benefit or a check—when the buying decision is made, a check that this guy can—this company can get the—close to 100 percent, so he is a better candidate than a company that is only approaching 50 or 60 percent.

And finally, the waiver process. Every once in a while I get a phone call from the Federal Railroad Administration saying, “There is a Buy America waiver request. What do you think about it?” Well, that is hardly a very transparent method of granting waivers. And I think that the waiver process ought to be more transparent and done more quickly than that.

Ms. RICHARDSON. Thank you. And my last question is for Mr. O'Connor. And that is you talked a lot about the—having the need for training. Could you give us some specific examples of not having the training? What is the monetary loss, and the economic impact? Because I think we all agree that the training should be there. But if you—given the other side of the aisle, I think it would be helpful to tell them what those economic impacts are.

Mr. O'CONNOR. Well, at this point I am not really prepared to give you specific anecdotal evidence of one specific incident and what the cost was.

I can speak in terms of the overall fire service, and I did have the privilege of chairing the Congressional Fire Services Institute for a number of years, which is a compilation of all the organizations, career and volunteer.

And some of the issues that this committee has considered in the past have been rerouting issues, making sure that every community is, you know, appropriately trained and equipped to handle—whether it is rail, over-the-road—those type of instances.

We could certainly have our staff research and provide you places where there has been a hazardous materials incident, whether by rail, whether over-the-road, and in jurisdictions where they have not had adequate training, what that has necessitated, in terms of an overall State response, a private response, et cetera. But right here today I cannot, off the top of my head, just say, “On such and such a date this occurred and this was the economic impact.”

But I think it was articulated very well that when these things occur it certainly interrupts commerce. And the more quickly that you can mitigate these incidences and move on, the better it is for the community and for commerce, as a whole.

Ms. RICHARDSON. If you could—and if it could be accepted for the record—if you could submit some of those examples, and also give us a sense, when the training does not occur, how many more men and women it requires, and so on. Thank you, and I yield back.

Mr. SHUSTER. Thank you very much. And I want to again thank everybody for coming here today, and testifying. I appreciate the back-and-forth from the table and back into the crowd.

But again, thank you all very much for coming here today. It will all be in the record. And I look forward to working with you as we move forward. Thank you very much, and this hearing is adjourned.

[Whereupon, at 11:03 a.m., the subcommittee was adjourned.]

**Statement of Stephen J. Bruno**  
**Vice President, Brotherhood of Locomotive Engineers and Trainmen**  
**Before the House Subcommittee on Railroads, Pipelines and Hazardous Materials**  
**Hearing on**  
**Railroads and Hazardous Materials Safety Programs:**  
**Reforms and Improvements to Reduce Regulatory Burdens**  
**April 7, 2011**

Good morning, Chairman Shuster and Ranking Member Brown. My name is Stephen Bruno and I am a National Vice President of the Brotherhood of Locomotive Engineers and Trainmen; I also currently serve as the Interim Director of Regulatory Affairs for the BLET.

I would like to thank the Subcommittee for holding this hearing today to solicit stakeholder opinions on the content of the rail and hazmat titles of the upcoming Surface Transportation Reauthorization. Given the comprehensive nature of the Rail Safety Improvement Act of 2008, this legislation is timely, and we hope that it will provide for a well thought out and ongoing revitalization of our nation's surface transportation programs.

I would first like to take up the matter of reducing regulatory burdens in the industry before I move on to specific issues the BLET would like to see in the Surface Transportation Reauthorization.

While rail labor and, specifically, the BLET find some regulations in the industry burdensome, we also acknowledge the need for regulations. We accept, as equal partners in the industry, that our regulatory scheme, while complicated at times, is necessary in order to ensure the highest possible level of safety in the railroad industry. The regulations that exist were promulgated for a reason — often in the wake of tragic incidents or due to an acknowledged need to enhance safety or protect the public.

For the past decade and a half, the most effective of these regulations were developed by stakeholders from labor organizations, railroads and the government. These experts, with their specialized knowledge, know what is needed to address the safety concern that prompted the regulatory requirement in the first place. Development of the vast majority of those rules and regulations — particularly the most significant ones — takes place in the Federal Railroad Administration's Rail Safety Advisory Committee process. Together, relevant industry stakeholders work to achieve an appropriate balance between costs and benefits — between financial interests and safety — and consensus regulation is the norm, rather than the exception.

This subcommittee is hearing today from many of these stakeholders, and will hopefully incorporate our suggestions into the rail and hazmat titles of the legislation. Our experience has been that when Congress, or any entity for that matter, imposes or rescinds regulatory requirements in a vacuum, the end product is considerably less effective and often results in unintended consequences. We believe that crafting regulations is best left to subject matter experts in a collaborative process, and the accomplishments of the RSAC proves that the current process works. Simply put, subject matter experts create the best regulations, especially when they collaborate; this is true both for creating new regulations and with respect to revising problematic regulations. We saw several examples of this in the implementation of the Rail Safety Improvement Act of 2008.



Most of the regulations mandated by Congress in the RSIA were referred by FRA to the RSAC subject matter experts for development. We believe that process ultimately produced more effective rules than those strictly prescribed by Congress and imposed unilaterally on the industry and its workers.

The best example — and the one I would like to focus on today — is the two different approaches to Hours of Service changes in the industry. In the RSIA, hours of service revisions for freight employees were dictated by Congress, while hours of service for passenger and commuter employees were developed through the RSAC process, utilizing science, along with the expertise and perspective of labor, management and the federal government.

The passenger hours of service RSAC worked to craft regulations that will reduce fatigue and also will monitor and address the remaining potential for fatigue in that segment of the industry on an ongoing basis, taking into account the spectrum of operational realities in the passenger rail / commuter rail industry. Scientific evidence formed the basis for the passenger/commuter hours of service regulations, and was based on the actual work schedules of that segment of the industry. As a result — and due to the work in the collaborative regulatory process — the passenger/commuter hours of service regulations will be far more effective in mitigating fatigue, far less stringent, and far less costly to the industry than the statutory provisions governing freight service that were imposed by Congress.

On the other hand, the hours of service changes for the freight industry that were imposed by Congress have actually — in some significant respects — had the opposite effect of that intended by Congress. The changes that were made in 2008 focused on slowing the frequency with which train employees report to work, along with adding caps for work hours and excess limbo time; rather than being based on specific scientific principles and empirical data, arbitrary limitations were prescribed. Congress did not consider the operational manipulations that were available to the industry to defeat the new restrictions imposed by the RSIA. As a result, fatigue for operating employees has not been significantly reduced and, in fact, actually has worsened.

A couple of weeks ago, when BLET National President Dennis Pierce came before this subcommittee, he laid out the changes envisioned to the hours of service that the subject matter experts in labor have crafted. These reforms are based on our expertise and the experiences of our members since enactment of the legislation.

As President Pierce said — and I wish to reiterate today — we believe that Congress intended to provide a predictable and defined work/rest period in the RSIA but, unfortunately, this was not the result of the legislation. The BLET believes that while Congress had the right intent, their actions had unintended consequences. In order to correct the resultant shortcomings and achieve Congressional intent, labor has crafted technical corrections based on our expertise, sound scientific evidence and simple common sense. They focus on the fatigue that is prevalent in unscheduled operations. One of the things the science proved beyond any reasonable dispute was a much lower potential for fatigue exists in scheduled service because of the certainty of knowing when one is required to report for work.

As we have said on numerous occasions, fatigue in unscheduled service is easily managed by (1) requiring a 10-hour call prior to work, instead of requiring 10 undisturbed hours off following a work assignment, and (2) requiring that crews who outlaw be physically relieved from their

trains no later than the expiration of the twelfth hour. A 10-hour call would provide the ten hours of undisturbed rest immediately prior to performing covered service. Our members would know 10 hours prior to going to work — instead of the one and a half to two hours currently standard in the industry — that they are, in fact, going to work that day, and can schedule their rest accordingly so as to be optimally alert when they report.

We also believe, and it is simple common sense, that our members should also know approximately when they are going to be finished with their duty tour. This can only occur through stricter controls on excess limbo time. The way to solve this problem is to relieve crews from their trains prior to the expiration of the twelfth hour of their duty tour.

In addition to these two issues, which subject matter experts agree will significantly mitigate fatigue, the law inadvertently left gaping loopholes for the railroads, which reduce the fatigue mitigation Congress intended to a mere shadow. The manipulation of off-duty periods at away-from-home terminals is undoing much of what Congress tried to accomplish. These incidents — which do not occur on every railroad or at every terminal — are nevertheless prevalent enough to warrant changes to the law that would have been otherwise developed through the existing regulatory process. BLET members are being stranded at their away from home terminals for artificial reasons and inflated periods of time in order to reset their “start” clock, so that the railroad can avoid having to provide them with the extended 48-hour rest period at home. The manipulation of on-duty times at away-from-home terminals prevents our members from getting truly restorative rest, best obtained at home, and from spending time with their families. We believe this is contrary to what Congress intended in the legislation, and must be changed in the reauthorization you are considering.

These issues, among others, are covered in technical corrections that we will present to you in the near future. We hope that Congress will take up these technical corrections as they were developed by the subject matter experts in labor, and include them in the Surface Transportation Reauthorization.

As I stated earlier, it is the opinion of the BLET that both the process and the results of the passenger/commuter hours of service, and other sections of the RSIA that were assigned to the existing RSAC regulatory development process, are more effective and efficient than those that were strictly prescribed by Congress. We also believe that these two examples illustrate the fact that it is only through the collaborative work of subject matter experts that regulations should be either crafted or, for that matter, reformed or repealed.

You will hear a great deal today about regulations that the railroads and others find onerous. However, Congress, in all of these upcoming debates, must take into account the process by which the regulations were crafted and the intent of the regulations before you choose to change or simply repeal them. A collaborative process through rulemakings and other means results in better consequences for all involved. Stakeholders and subject matter experts have the ability to assess issues, take all costs and benefits into account — not merely financial considerations — and craft regulations that can truly impact safety.

I would now like to turn to an additional issue that the BLET would like to see in the Surface Transportation Reauthorization. Chairman Mica has on several occasions promised BLET

representatives and others that there will be a rail title in this legislation and we applaud his commitment to the rail sector. Too often, the bulk of surface transportation reauthorization is focused on other modes, mainly aviation and highways, and glosses over rail as an important surface alternative. However, while we applaud his commitment, we have concerns about the substance of the proposed rail title.

This committee has held several hearings in recent months, the topics of which give labor concerns, especially in the areas of passenger and high speed rail. The focus of two hearings was on the privatization of passenger rail.

I spoke earlier about subject matter experts being allowed to craft regulations and run programs. The subject matter expert on high speed and passenger rail is clearly the National Railroad Passenger Corporation, or Amtrak. Amtrak's expertise and advice is routinely sought by Republican and Democratic administrations alike. Their experience and expertise is an incalculable asset to our nation's railroad passengers.

For 40 years, in cooperation with its employees, Amtrak has run our nation's passenger rail system in the most admirable way possible. I do not want to reiterate the entire history of passenger rail in this country, but needless to say, we all know why Amtrak was founded — the freight rail companies could not operate passenger rail at a profit and, thus, wanted to abandon the service. Since 1971 Amtrak has been continually underfunded by the Congress. Despite being appropriated only enough money to fail, Amtrak has managed to move passengers, many of whom lack transportation alternatives, in the safest, most efficient means possible. Now, Amtrak ridership is on the rise with growth reported in each of the last 16 months. Annual ridership records were set in seven of the last eight fiscal years. On the Northeast Corridor (NEC), Amtrak is operationally in the black as NEC performance metrics continue to improve, and Amtrak's Acela service beats the aviation alternative in the all-important New York to Washington and Boston to Washington markets.

I find the fact that this country has underfunded passenger rail unfortunate. In these days of three and a half dollar gasoline prices and climate change, it also is counterintuitive. It appeared to us that Congress finally had seen the big picture over the past few years. However, now that Amtrak has — through the work of this Subcommittee in previous Congresses and a sound financial plan — finally been allowed to have more than starvation level funding, some in Congress are talking about selling off portions of the Northeast Corridor to private investors. Amtrak and its skilled employees are performing better than at any time in railroad's history, as evidenced by the numbers cited above. Now profiteers are lining up to stuff their pockets with returns made possible by the investment of the taxpayers.

We can best ensure the public good by maintaining Amtrak as our nation's passenger rail service provider. We must remember that private service would only be provided where it is profitable to do so for private investors and shareholders, and the public good would be ignored. That is the lesson behind the creation of Amtrak 40 years ago. Therefore, instead of continually threatening Amtrak with privatization, we should instead fund it at levels so that it can thrive. We should acknowledge that, while there can be a private role in transportation — and in the rail sector, that role is fulfilled by the freight carriers — intercity passenger rail is best left to the experts at

Amtrak, the most experienced and successful provider of an important and expanding transportation service.

I would also like to take the opportunity to raise another issue before the Subcommittee. In March, the BLET, along with six other labor organizations, filed comments in response to FRA's notice of meeting and request for comments on special movements of non-compliant hazardous materials cars. The FRA routinely grants special permission for railroads to transport damaged hazardous materials containers on mainline tracks to repair facilities, and the number of these movements has been steadily increasing over the past sixteen years. We are concerned because, these movements have doubled since 2007.

It is unclear if the cause of the increase is the result of improved inspection efforts, an increase in the number of damaged containers, a decrease in the number of repair facilities or qualified personnel at the facilities where the defects are found, or the industry was previously concealing the movement of these damaged containers. In any event, we contend that doubling the number of approvals over four years is a substantial increase and should be investigated. It certainly does not indicate that removing regulatory oversight would be a positive development for the railroad industry.

The risk to public and employee exposure to hazardous materials will only increase if the current rate of movement approvals continues. The increasing pace of the approval process will cause either a drop-off in the quality of review of the applications for approvals or the need for greater staffing at the FRA.

The BLET is also concerned about the elimination of several regulations that have been cited as examples of regulatory overreach, and may be substantively changed or eliminated by the Surface Transportation Reauthorization. Many of the regulations we are discussing today were included in the law as a result of several tragedies that struck railroad workers in recent years — most notably, the death of BLET member Christopher Seeling in the accident in Graniteville, South Carolina in 2005. Seeling, a 28-year-old locomotive engineer, died after inhaling toxic chlorine gas fumes from a collision in unsignaled territory. His death, and his parents' subsequent activism, prompted this body to add several provisions to the Rail Safety Improvement Act of 2008.

One is statutory requirement that FRA publish regulations establishing Emergency Escape Breathing Apparatus Standards. As a result of the proposed rulemaking last year, train crew members on trains carrying toxic by inhalation materials will be provided with EEBAs that will allow them a means of egress in case of a TIH release. Every day, railroad operating crews move trains across our country carrying hazardous materials. They are the first to know of any hazardous materials release, and must be afforded a means to save themselves in order to save the lives of others. An apparatus such as this would have saved the life of Chris Seeling. It would have allowed him and his fellow crew member to survive long enough to get away from the accident site, and alert emergency personnel.

The railroads will make the case that this regulation is simply too expensive. However, once a railroad has an adequate supply of EEBAs available, it will be of little burden to the railroads to provide all employees who are transporting asphyxiants with EEBAs.

Like the EEBA provisions, positive train control also was included in the RSIA due to Graniteville and several other noteworthy incidents. On March 17, this Subcommittee held a hearing regarding the implementation of the RSIA, and the railroads focused almost exclusively on attacking positive train control. During that hearing, the railroads reiterated their position on the baseline year of 2008 identified by the FRA and FRA's decision to not incorporate a broad *de minimis* exemption from the PTC requirement for poisonous-by-inhalation, or PIH, traffic.

The railroads also argued that other, alternative means exist to prevent the accidents PTC will prevent are available, and if given the opportunity the railroads would surely implement them. This was probably the most disingenuous part of the railroads' testimony. The technologies they discussed have been available to the railroads for decades. Indeed many of the passenger and commuter railroads have had wayside and cab signal systems with speed control and train stop technology installed on their railroads for decades. Yet the Class I railroads do not have this technology installed on significant portions of their property. Where the railroad does have signal systems and technology in place, it is not to provide a safety enhancement for the general public or the employees; it is installed to increase productivity by moving trains more expeditiously. If the railroads wanted to install these "alternative means" for safety purposes, they could have done so years ago.

The carriers' main criticism of the PTC requirement is based on a business model of cost/benefit analysis. And while the industry's business case may be appealing to Wall Street, the BLET's support for the statutory PTC requirements and the FRA's final rule implementing those requirements takes into account the value of human life, which apparently is not an important consideration in the business model of cost benefit analysis. PTC will serve as a safety overlay, and will significantly reduce human error and preventable losses of life.

In examining both regulations, the statistical value of a human life cannot be ignored. The latest data that we are aware of is from the March 18, 2009 revision of the Department of Transportation's *Treatment of the Economic Value of a Statistical Life* for determining cost benefits analysis which estimates the "Value of a Statistical Life" at \$5.8 million. In addition, the value of preventing injuries requires a subjective assignment of casualties to several categories of an "Abbreviated Injury Scale" the most severe being a critical injury. The cost associated with a critical injury is 76.25% of the cost of a statistical human life. FRA identified 660 inhalation casualties over the ten year period between 1997 through 2006. If only 2% (14) of the predictable inhalation casualties are deemed critical, the benefit is roughly equal to the \$73.9 million cost FRA has assigned to the implementation of open loop/circuit type EEBAs. In the case of PTC, if you take a look at the BLET website, as President Pierce noted in his testimony, you will find the names of 70 of our members who were killed in the line of duty over the past 19½ years. Nearly 50 of those deaths could have been prevented by PTC. These lives are statistically valued at nearly \$300 million, and this does not include those who were injured in accidents that could have been prevented by PTC.

In summary, the BLET believes in all cases that railroad regulations should be crafted, revised or rescinded by individuals with subject matter expertise in the railroad industry. This process should be collaborative with all the stakeholders, and must take into account the views of all impacted by the regulations. While the Congress has a place in broadly defining areas of safety

that must be addressed as a matter of public policy, regulation is best written in a fashion that allows for those with a stake in the rules to have a hand in its creation and amendment.



**Railroad Transportation Programs: Reforms and Improvements  
to Reduce Regulatory Burdens**

*"Public Private Partnering for Passenger Rail - A Reform Initiative"*

**Testimony of Mr. Ray B. Chambers on Behalf of the  
Association of Independent Passenger Rail Operators**

Before the Subcommittee on Railroads,  
Pipelines and Hazardous Materials  
U.S. House Transportation & Infrastructure Committee  
April 7, 2011

The Association of Independent Passenger Rail Operators (AIPRO) was established to actively support the expansion of passenger rail service in the United States of America. Our core mission is to promote development of our nation's rail infrastructure, while seeking to increase passenger rail opportunities through a dynamic and competitive marketplace. A principal objective is to reduce regulatory burdens in order to encourage market oriented development.

For the past 70 years America's national infrastructure investments have been largely in highway and aviation. As we project to the future we foresee increased gridlock and pollution. A robust Rail Title to the next Surface Transportation Act that encourages an expansion of freight and passenger rail capacity can help to meet the future needs of this country.

In our previous testimony on March 11, we outlined a program that is built on the foundation of the reforms in the Passenger Rail Investment & Improvement Act of 2008. As Chairman Shuster pointed out at that hearing, "For the first time, rail capital investment programs were established that give states primary control to improve and expand intercity passenger rail services." Expanding on that idea is at the heart of our proposal.

AIPRO recommends a specific program for the Rail Title, which we call *Public Private Partnering for Passenger Rail - A Reform Initiative*, or the P4 Rail Reform Initiative. Our P4 proposal is centered on competition between passenger operators; our main focus is on the state supported passenger rail corridors. However, we believe the principles here can be expanded to the Northeast Corridor, to long distance passenger service, and to a new concept for station area development that can provide the states with a fresh source of revenues for operations and maintenance.

We recommend a self-contained section in the Rail Title to promote public private partnering in passenger railroading. We suggest a P4 Commission chaired by the states to oversee and advise same. Streamlining existing program delivery and eliminating red tape is a key goal. One role of the P4 Commission will be to identify regulatory burdens in specific passenger rail program delivery and to recommend new procedures. Programs that should be reformed within the Rail Title include the RRIF Loan program and the Section 214 passenger service pilot program. We proposed a special P4 RRIF plan in our March 11 testimony. The 214 program is most complex and thus there has been no interest exhibited by any party, nor has FRA engaged in a rulemaking.<sup>1</sup> We believe that program can be streamlined with incentives to Class I railroads that would make it a potentially interesting alternative. This will take a statutory fix. We suggest the environmental process can also be reformed in the Rail Title. Today, for example, if a freight railroad wants to build a second track on existing rights of way with private money it can. If public funds are involved there is a comprehensive environmental permitting and approval process. We recommend if the railroad line exists, and a public project is approved, the freight standard for improvement should apply. At a minimum, an expedited and consolidated process should be put in place with a goal of eliminating all unnecessary bureaucratic roadblocks to drastically cut the time from project conception to completion.

Under our reform proposal, a special P4 Rail Infrastructure Bank which will be structured for maximum efficiency. The bank will be funded by new RRIF loan fund authority and grants. It will have the ability to combine available grants and loans for maximum public and private leverage. For all corridors less

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<sup>1</sup> Comment – At the March 11 hearing, FRA Administrator Joe Szabo announced he is about to initiate a Section 214 rulemaking;



than 750 miles federal grant funding will be directed to the states<sup>2</sup>. The states will be encouraged to initiate procurement for the total passenger operation or component parts of the service through fair and open competitive processes. FRA will have responsibility for intercity rail service standards, safety standards, and enforcement.

We want all stakeholders to be a part of this P4 New Paradigm process. We propose that independent operators must have the track owner's approval and would have no right of access at incremental cost. We believe California's Capitol Corridor is a good model in this regard. Railway labor protections would carry forward.

In the final analysis we know that public-private partnering is one solution and is relatively new to the American rail scene. There are many issues that need to be worked through, and that is the purpose of the P4 Commission. The Rail Title should be carefully drafted to eliminate barriers, impediments, or regulatory burdens that block flexibility. States and local jurisdictions must be permitted the most efficient use of these funds for everything from passenger project design to service delivery. Local public-private partnerships ensure that taxpayer dollars will be conserved over the long term. The competitive process and private partners will create efficiencies and cost savings that will be passed right back to the states to lower operating subsidies and guarantee loan repayments. These partnerships by definition include private sector operator participation. Nothing less will work to make rail passenger transportation truly sustainable for all stakeholders from riders to taxpayers.

Our proposal is designed to bring maximum competition and private involvement into the development of a cost effective national passenger rail option for the future. This proposal is not radical but consistent with the trend in the American commuter rail market and growing international practices.<sup>3</sup> We believe our proposal is in direct line with the call of Chairmen Mica and Shuster to reduce regulatory burdens and to increase competition and private sector participation in rail passenger service. We believe it is also the best way to reach President Obama's goal of putting a high speed and intercity passenger rail within the reach of 80% of Americans within 25 years.<sup>4</sup> A strong P4 program in the Rail Title, with federal oversight and state responsibility can begin to establish rail as the third true American transportation option along with highways and aviation.

Thank you.

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<sup>2</sup> Comment – While we recognize the dire deficit situation we would argue that transportation infrastructure investment creates jobs and builds America's competitiveness for the future. P4s will help leverage finance. We would hope that the House-Senate Conference on the Surface Transportation Act Rail Title will at a minimum continue the PRIIA Sec. 24402 state assistance grant program or create a new program that will provide grant assistance to the states for rail passenger infrastructure.

<sup>3</sup> A requirement for rail passenger competition is now an EU law.

<sup>4</sup> Bill Shuster statement, News Release, Committee on Transportation and Infrastructure, "Mica & Shuster Call for Larger Private Sector Role in Passenger Rail, p. 2

Testimony of:  
John L. Conley  
President  
National Tank Truck Carriers  
950 N. Glebe Rd.  
Arlington VA 22203

Hazardous Materials Transportation Act Reauthorization  
Railroads, Pipelines, and Hazardous Materials  
April 7, 2011

Mr. Chairman, Madam Ranking Member and Members of the Subcommittee:

My name is John L. Conley and I am president of National Tank Truck Carriers. My association represents trucking companies that deliver materials in bulk such as petroleum products, chemicals, food products and cement. Our membership also includes companies that provide equipment and services to the tank truck industry.

I first would like to commend the safety professionals at the Pipeline and Hazardous Materials Safety Administration and their predecessor agency with whom I have worked for over 35 years. As the Chairman has observed, the United States is served by a very safe hazardous materials transportation network. This system that is copied by countries around the world is credit to and verification of the close cooperative relationship between the agency and industry to meet our shared goal of no hazardous materials transportation incidents

We sometimes disagree on how to meet that shared objective and I am here today to discuss two issues that cause my members real concern. The first issue involves the transportation of flammable materials in the loading lines of cargo tanks – the so-called wetlines issue. This is not a new topic for veteran members of this subcommittee.

The second issue concerns a rulemaking from PHMSA which I believe would compromise hazardous materials transportation regulatory compliance, enforcement, and safety. That rulemaking—HM241—would result in severely restricted public access to the regulatory process and to currently applicable regulatory requirements in the hazmat regulations.

NTTC appreciates the work that both the Chairman and Ranking Member of this subcommittee devoted to the wetlines issue in the 111<sup>th</sup> Congress. This issue has now taken on a life of its own as PHMSA recently published another proposed rulemaking to ban wetlines.

NTTC-2

Unfortunately, in an attempt to change economic cost benefit facts to fit a failed theory, PHMSA bases much of HM213D on an unproven manual purging device available only from one commercial provider. To our knowledge, no carrier has purchased or tested this manually operated device which is supported only by the claims of its manufacturer.

Our analysis of this recent wetlines ban iteration reveals that its costs far exceed its potential benefits. We also remain concerned that any retrofit requirement could be detrimental to the safety of workers in tank repair facilities, and therefore ask this Committee to mandate a study of the wetlines issue while enjoining PHMSA from finalizing the rule proposed on January 27th.

Such a study should consider the actual scope of the perceived problem, the advantages and disadvantages of possible equipment or operational solutions to the perceived problem including the potential increased risk exposure to shop workers, and whether or not the issue should be addressed at the petroleum loading rack or on the thousands of pieces of trucking equipment operated throughout our country.

The second issue I would like to briefly address is a PHMSA rulemaking that would turn over the cargo tank rule-writing function it now so competently exercises in Title 49 Parts 178 and 180 to third party service providers. The cost free and immediate availability of the current regulations and, more importantly, ready access to the open regulatory process would be severely impacted for no safety reason. The existing process would be replaced by a closed process where private entities develop copyrighted materials to be adopted by reference by the agency and purchased by the regulated public and enforcement communities. Those private entities have filed the petitions that led to this rulemaking, and who could blame them?

A tank truck carrier, shipper, equipment manufacturer, safety trainer, or member of the enforcement community that now has complete access to the regulations and regulatory process would be required to pay at least \$600 for the two books required to learn compliance information now included in the publically available regulations, and would have to work through the private providers' committee process to propose changes or even get interpretations of what is required for compliance or enforcement.

National Tank Truck Carriers firmly believes that PHMSA should not outsource this important safety responsibility. The current system has worked very well as the outstanding safety record of tank truck transportation of hazardous materials clearly demonstrates. While we generally support the concept of development and use of consensus standards, this transfer of existing regulations through HM241 to private entities would impact thousands of companies and enforcement agencies. Again, there is no safety reason to fix a regulatory process that is not broken.

Thank you for your attention.

TESTIMONY OF

TOBY L FAUVER, AICP  
DEPUTY SECRETARY FOR LOCAL AND AREA TRANSPORTATION  
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

REGARDING

REFORMING FEDERAL RAIL PROGRAMS

BEFORE THE

SUBCOMMITTEE ON RAILROADS PIPELINES AND HAZARDOUS MATERIALS  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 7, 2011

WASHINGTON, D.C.

Pennsylvania Department of Transportation  
400 North Street—8th Floor  
Harrisburg, Pennsylvania 17120  
717-787-2838

Under the right circumstances, high speed rail attracts riders and offers the nation a viable transportation option as we face the challenges of dealing with climate change and looking for alternatives to imported oil.

In Pennsylvania, we completed a commitment to partner with Amtrak on a \$145 million improvement to the 104-mile Keystone Corridor between Philadelphia and the state capital, Harrisburg.

The improvements, completed in 2006, included 128-miles of continuous-welded rail, more than 200,000 concrete ties, 52 new switches and the first upgrade to the signal and electrification system in 70 years and allow us to operate trains at a maximum speed of 110 mph – the fastest in the US outside the Northeast Corridor.

The express travel time between Philadelphia and Harrisburg was cut to 90 minutes – a 30 minute improvement. That is a far better travel time than by car, which is anywhere between 2 hours and 20 minutes to three hours depending on traffic. Passengers using the Keystone Corridor avoid one of our most congested expressways – Interstate 76, the Schuylkill Expressway, into Philadelphia.

Riders also responded to these improvements. Since 2006, ridership on the Keystone Corridor has improved by 45 percent. The line provided service to 1.2 million riders last year.

These Keystone Corridor improvements represent a first step toward building a truly national intercity high speed rail network. We have more to do in Pennsylvania, but we cannot do more without a strong partnership with the federal government.

Twenty years later, many of the Pennsylvania Stations owned by Amtrak and the federal government do not meet the requirements of the Americans with Disabilities Act (ADA). Much of the infrastructure is still over 80 years old and is in desperate need of replacement to be in a state of good repair.

Critics say Intercity and high speed rail is too expensive and a waste of resources. They could not be more incorrect.

Again, in the right places, such as along the Northeast Corridor, the Keystone Corridor and other high density corridors around the nation, an investment in high-speed rail makes tremendous sense and can give the nation real, workable transportation options for the future.

In the Northeast Corridor, where Amtrak's Acela trains are capable of reaching 150 mph, intercity rail has a 50 percent market share of the riders. This offers a glimpse of what properly sited high speed rail can accomplish.

The United States must address unmet transportation needs. Both transportation funding and program structure need reform in Washington. The United States has fallen far behind many other developed nations in terms of infrastructure investments – and passenger rail is a glaring example. Other nations dwarf our rail investment. Germany's federal government gives its states nearly \$9 billion a year for rail projects. France spends 20 times more per capita on rail than the U.S.

High speed and intercity rail programs are about connecting high density city areas, and doing so promotes higher levels of sustainability. In Pennsylvania, our population over the last decade has grown by less than 1 percent, but our increase in developed land exceeds 50 percent. We simply must take a different course.

It is important to note that the federal dollars we are talking about for high speed rail are for capital – the cost of building these systems. States and cities are going to have to address how they are willing to pay the cost of operating these systems. In Pennsylvania, we have made those choices and in this fiscal year, committed more than \$9 million to pay for operating costs on the Keystone Corridor. These systems cannot pay for themselves. Some tough local and state decisions must be made to make an intercity/high speed rail a reality.

Many states including Pennsylvania are struggling with the new federal requirements under Section 209 of PRIIA to allocate costs to corridors less than 500 miles in length. This law will push operating costs of Amtrak on to states like ours that will require us to pay 4 to 5 times what we are paying now for the same service we now receive. In the case of our corridor, Amtrak owns both the Northeast Corridor and the Keystone Corridor Infrastructure. States like ours have little to no choice in paying the cost structure of a federally owned private company, but have no say in labor contracts, overhead spending decisions or work practices. I have several quotes up on my office wall that I renew every day with. One is used a lot by Albert Einstein "Insanity: doing the same thing over and over again and expecting different results."

We cannot ignore investing in our rail infrastructure and expect that someday, we will emerge with the best system in the world. We also can't bury ourselves in bureaucracy that slow down projects and system development. We must make smart investments that have a good return on investment.

We need private sector involvement and we must recognize that it is going to require a significant investment over decades in both our passenger and rail freight networks. Passenger

rail programs need to be mainstreamed into Transportation Reauthorization. They do not need a separate title.

We also need to eliminate the overlapping authority for NEPA clearance. Every modal administration within USDOT deals with NEPA differently. If one federal agency within USDOT provides NEPA clearance then the others should accept it, not have to reapprove causing time delays and added cost.

In the case of passenger rail, we need to learn from the rest of the world and separate infrastructure ownership from operations so we can effectively introduce competition and innovation.

What makes intercity/high speed rail successful? People want to use transportation systems that are frequent, reliable, cost affordable, and that are time competitive. Beyond the Keystone Corridor and Northeast Corridor, Pennsylvania does not currently have passenger rail services that meet those requirements.

**STATEMENT OF**  
**EDWARD R. HAMBERGER**  
**PRESIDENT & CHIEF EXECUTIVE OFFICER**  
**ASSOCIATION OF AMERICAN RAILROADS**



**BEFORE THE**  
**U.S. HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
**SUBCOMMITTEE ON**  
**RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS**

**APRIL 7, 2011**

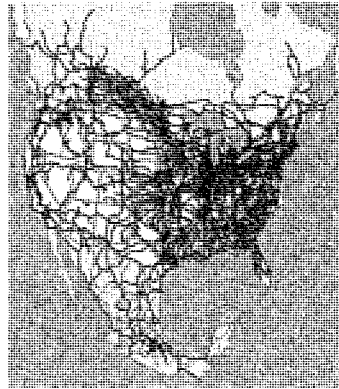
**Association of American Railroads**  
**425 Third Street SW**  
**Washington, DC 20024**  
**202-639-2100**



On behalf of the members of the Association of American Railroads (AAR), thank you for this opportunity to discuss the reauthorization of the Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users (SAFETEA-LU) as it relates to freight railroads.

AAR freight railroad members, which include the seven U.S. Class I railroads as well as approximately 75 short line and regional railroads, account for the vast majority of freight railroad mileage, employees, and traffic in Canada, Mexico, and the United States. Amtrak and several commuter railroads are also members of the AAR.

**The North American Rail Network**



Our nation's growth and vitality have always been closely tied to transportation. Today, our freight transportation networks are, in aggregate, the best in the world, providing both a tremendous competitive advantage for our farmers, manufacturers, and other businesses in the global economy as well as a means to significantly improve our residents' standard of living.

That said, it is clear that the nation's transportation system is overburdened, and I congratulate and thank members of this committee and others in Congress and the Administration for recognizing this point and seeking ways to fix it. For their part, freight railroads stand ready and determined to work cooperatively with you, other policymakers, rail customers, rail employees, and others to help ensure that our nation has the capability to transport goods and people safely, efficiently, and cost-effectively now and in the future.

The AAR respectfully suggests that policymakers have a key role to play. They should support policies that help ensure that adequate rail capacity exists to meet America's future

transportation needs and that the tremendous public benefits resulting from more freight and people moving by rail are realized. By the same token, policymakers should refrain from implementing policies that would make it more difficult for railroads to operate fairly and effectively in the transportation marketplace. Unnecessary and counterproductive legislation and regulation should be avoided, uncertainties that lead to restricted rail reinvestments should be removed, and policies that have worked well in the past to promote transportation safety and efficient transportation choices should be sustained.

In addition, it is critical that policymakers retain the existing balanced regulatory system that protects shippers against unreasonable rail pricing (where shippers do not have competitive options) while allowing railroads to largely decide for themselves how to manage their operations. Balanced regulation has made it possible for America's freight rail industry to become, in the words of *The Economist*, "universally recognized in the industry as the best in the world."<sup>1</sup>

#### **Freight Railroads Are a Vital Link to Economic Growth**

The U.S. freight railroad system is a tremendous national asset, serving nearly every agricultural, industrial, wholesale, retail, and resource-based sector of our economy. Our railroads move more freight, more efficiently, and at lower rates than any other freight rail system in the world.

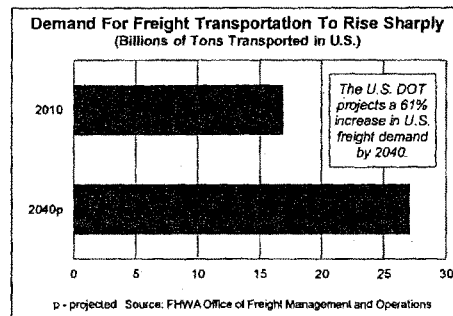
In fact, the cost efficiency of freight rail means that U.S. consumers and businesses pay tens of billions of dollars less in transportation costs than they otherwise would. A few years ago, the American Association of State Highway and Transportation Officials (AASHTO) estimated that if all freight rail traffic were shifted to trucks tomorrow, rail shippers would have

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<sup>1</sup> *The Economist*, "High-speed Railroading: America's System of Rail Freight is the World's Best. High Speed Passenger Trains Could Ruin It," July 22, 1010.

to pay an additional \$69 billion per year — or \$1.4 trillion over 20 years — for less efficient transportation alternatives. That figure is undoubtedly much higher today.

The recent recession significantly reduced freight transportation demand, but that's only temporary. Experts agree that over the long term, freight transportation demand will grow. The Federal Highway Administration, for example, recently reported that total freight movements across all modes will rise from an estimated 16.9 billion tons in 2010 to 27.1 billion tons in 2040 — a 61 percent increase.



Railroads will need to work hard to

make sure the capacity to handle this traffic growth is in place. Moreover, rail customers will continue to insist that railroads invest heavily in service-enhancing infrastructure. Demands for use of freight-owned track by commuter and intercity passenger trains are mounting and will continue to grow. And with highways becoming increasingly congested and demands to reduce emissions, conserve fuel, and promote safety on the rise, pressure on railroads to provide relief will only increase.

Unlike other transportation modes, freight railroads finance nearly all of their infrastructure spending with private funds. Largely as a result of approximately \$240 billion spent on infrastructure from 1980 through 2010 and another \$240 billion or so spent on equipment, America's freight rail network is probably in better overall condition today than ever before. Moving forward, though, the high quality of the infrastructure must be maintained and necessary investments must be made to meet the capacity and service challenges that lie ahead.

### The Benefits of Moving More Freight and People by Rail

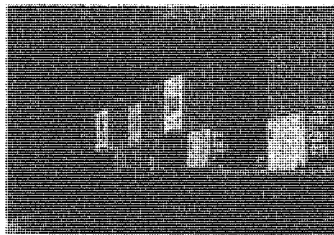
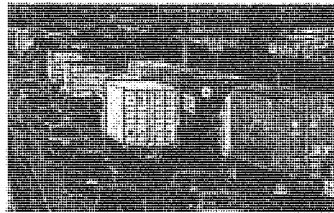
When deciding on transportation-related issues, members of this committee and other policymakers can choose to implement policies that eliminate uncertainties and would allow more people and more freight to move by rail, or they can choose to implement policies that create or perpetuate uncertainties and would mean fewer people and less freight moving by rail. We respectfully suggest that the proper choice should be clear. Making more and better use of our nation's rail assets makes good economic sense and represents sound public policy.

That railroads provide significant public benefits is beyond dispute. These include:

- *Jobs and Economic Development.* U.S. freight railroads provide the most efficient and affordable freight rail service in the world, connecting businesses with each other across the country and around the world and providing a huge competitive advantage for U.S. firms in the global marketplace.

According to a U.S. Department of Commerce model of the U.S. economy, America's freight railroads generate nearly \$265 billion in total economic activity each year including direct, indirect, and induced effects. In addition to their own 175,000 employees, freight railroads sustain more than 1 million additional jobs at firms that provide goods and services to railroads or that are recipients of spending by the employees of railroads and their suppliers.

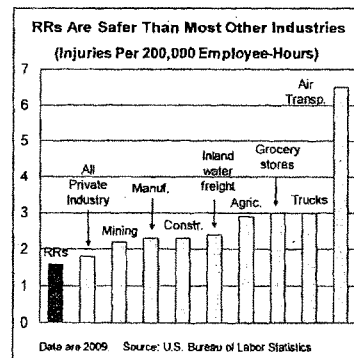
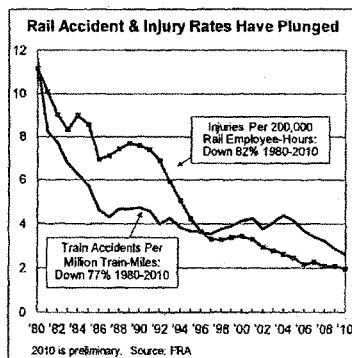
Millions of others work in industries that are more competitive in the global economy thanks to freight railroads' affordability and productivity. Railroads expect to hire tens of thousands of employees in the years ahead to replace workers who retire and to handle anticipated traffic growth.



- *The Environment.* On average, railroads are four times more fuel efficient than trucks. In 2010, U.S. railroads moved a ton of freight an average of 484 miles per gallon of fuel — about the distance from Washington, DC to Cincinnati, Ohio. And since greenhouse gas emissions are directly related to fuel consumption, moving freight by rail instead of truck reduces greenhouse gas emissions by an average of 75 percent.
- *Highway Congestion.* According to a recent study by the Texas Transportation Institute, highway gridlock costs the U.S. economy \$115

billion per year — and that's just in wasted fuel and time. Lost productivity, cargo delays, and other costs add tens of billions of dollars to this tab. Thus, highway congestion constitutes an "inefficiency tax" that all of us pay. But a single train can carry the freight of several hundred trucks. That means railroads reduce highway gridlock, the costs of maintaining existing highways, and the pressure to build costly new highways. That's especially important now when government spending is under such severe pressure.

- **Pollution.** Moving freight by rail rather than truck significantly reduces particulate, nitrogen oxide, and other emissions. The Environmental Protection Agency recently released new regulations that will mean even greater reductions in locomotive emissions.
- **Affordability.** Adjusted for inflation, on average it cost shippers 51 percent less to ship freight by rail in 2010 than in 1981 on a revenue per ton-mile basis. That means the average rail customer today can ship twice as much freight for about the same price it paid 30 years ago. Improvements in freight rail affordability over the years are due to huge rail productivity gains that have largely been passed through to shippers in the form of lower rates, and that would not have come about but for a reasonable regulatory structure that allows railroads to compete fairly in the transportation marketplace while protecting shippers against unreasonable railroad pricing. The affordability of freight rail saves consumers billions of dollars each year and provides a major competitive advantage for American firms in the global marketplace.
- **Expanded passenger rail.** Freight rail provides the infrastructure on which most passenger rail operations take place.
- **Safety.** Railroads today are one of our nation's safest industries. They have lower employee injury rates than other modes of transportation and most other major industry groups, including agriculture, construction, and manufacturing. Freight rail transportation is associated with an estimated one-eighth of the fatalities of intercity motor carriers per unit of freight moved. Railroads are continually working to further improve the safety of their operations, but they're proud that 2010 was the safest year ever for railroads, breaking the record set in 2009.



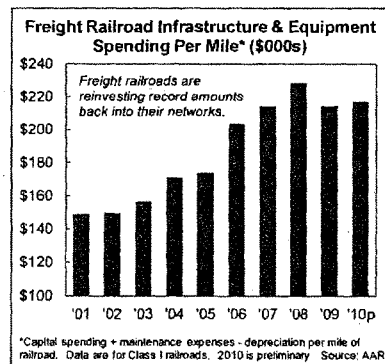
It is in our nation's best interest to allow the major public benefits of freight rail to continue to accrue as quickly as possible. A good way to help make sure this happens is by ensuring that railroads and other transportation providers operate on a level playing field, by eliminating uncertainties and modifying unreasonable regulations that currently hinder rail investments, and by retaining key transportation programs that work well now and would continue to work well in the future.

#### **Importance of a Level Playing Field**

The competition railroads face in the transportation marketplace is fierce. Railroads welcome this competition because they are confident that they provide the combination of price and service attributes that their customers want. That said, competition should be the product of free-market forces. In other words, the "playing field" among transportation providers should be level. Unfortunately, that's not always the case.

#### **Truck Size and Weight**

America's freight railroads operate almost exclusively on infrastructure that they own, build, maintain, and pay for themselves. From 1980 to 2010, they reinvested more than \$480 billion of their own funds — equivalent to about \$675 billion in today's dollars and equal to more than 40 cents out of every railroad revenue dollar over this period — on upgrading and maintaining locomotives, freight cars, tracks, bridges, tunnels and other infrastructure.



By contrast, trucks operate on publicly financed highways, and as discussed below, the taxes trucks pay do not come close to covering the costs associated with their use of the infrastructure that the public provides.

Truck size and weight limits on federal highways were frozen by Congress in 1991, largely because of concerns about the safety of longer and heavier trucks and concerns about the highway damage that heavy trucks cause. Over the years, some groups have called for lifting the freeze. Most recently, H.R. 763 (the so-called "Safe and Efficient Transportation Act") in the current Congress would raise the federal weight limit to 97,000 pounds for combination trucks that add a sixth axle to the five such trucks usually have.

From the railroads' perspective, the key issue with truck size and weight is the amount of damage done by trucks to our nation's highways and how that damage is paid for. According to the most recent U.S. Department of Transportation Highway Cost Allocation Study, combination trucks weighing 80,000 to 100,000 pounds pay just half the cost of the damage they cause to our highways.<sup>2</sup> The study found that trucks weighing more than 100,000 pounds pay only 40 percent of the damage they cause. The existing underpayment is in the billions of dollars and must be covered by other taxpayers, not by the trucks that cause the damage.

As the Government Accountability Office has noted, "From an economic standpoint, this ... distorts the competitive environment by making it appear that heavier trucks are a less expensive shipping method than they actually are and puts other modes, such as rail and maritime, at a disadvantage."<sup>3</sup> And as the National Surface Transportation Policy and Revenue Commission noted in a 2008 report, this violates a principle of highway taxation, dating back to

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<sup>2</sup> *U.S. DOT Comprehensive Truck Size and Weight Study*, August 2000. An update to the 2000 study is reportedly forthcoming.

<sup>3</sup> Government Accountability Office, "Freight Transportation: National Policy and Strategies Can Help Improve Freight Mobility," GAO-08-287, January 8, 2008, p. 16.

the creation of the Highway Trust Fund, that “different vehicle classes should be charged in proportion to their contribution to highway investment requirements.”<sup>4</sup>

Relaxing truck size and weight limits would make this inequity much worse because even more freight would be transported by heavy trucks that don’t pay their cost responsibility. Unless we want our highways to fall apart, this even-higher underpayment would have to be made up by state and local governments, other motorists, or other taxpayers.

Bridges are a primary concern. Bridges are designed with a safety margin of error to ensure against bridge failure. Heavier trucks erode that margin of error, increasing the number of bridges that must be replaced, strengthened, or posted. Adding axles does nothing to fix this problem. Already, more than 146,000 highway bridges (some 24 percent of the nation’s total) are structurally deficient or functionally obsolete.

Proponents of heavier trucks on our highways implicitly acknowledge the extra damage such trucks would cause by agreeing that heavier trucks should pay extra taxes. Under H.R. 763, for example, the annual federal “use tax” for heavier trucks would rise from the current \$550 to \$800, an increase of \$250. This additional tax is equivalent to just a few cents on a per-gallon of fuel basis — a woefully deficient amount to cover the costs associated with the damage 97,000 pound trucks would inflict on our highways and bridges. According to a recent analysis of FHWA data by Norbridge, a well-respected management consultancy, 97,000 pound trucks would enjoy an average underpayment on the order of \$1.17 per gallon of fuel they consume.

Increased truck weight limits would also lead to more freight carried by trucks and less freight carried by trains, especially short line railroads. Traffic diversion would mean that railroads of all sizes would have less money to reinvest in their privately-owned networks. This

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<sup>4</sup> National Surface Transportation Policy and Revenue Study Commission, Final Report, Chapter 5.



would lead directly to reduced rail capacity. Traffic diversion would also harm the environment. Already-overcrowded highways would become even more crowded, and since railroads on average are four times more fuel efficient than trucks, diversion could increase fuel consumption by hundreds of millions of gallons per year and lead to a corresponding increase in greenhouse gas emissions.

It should be stressed that railroad opposition to increasing existing truck size and weight limits should not be construed to mean that railroads are in any way “anti-truck.” Railroads fully recognize the critical role trucks play in American commerce, and railroads value deeply the transportation partnerships they’ve forged with motor carriers all over the country. That should not detract, however, from the fact that raising allowable truck weight limits would give trucking companies a free ride that would have to be paid for by other highway users, other taxpayers, and railroads. Public policies which permit heavy trucks to operate while avoiding their full cost responsibility are inefficient from an economic point of view and unfair from a competitive equity standpoint. Unless trucks pay their full costs, existing weight limits should not be changed.

#### **Importance of Regulatory Certainty and Reasonableness**

In January 2011, President Obama announced that he is ordering a government-wide review of regulations that stifle our nation’s economic competitiveness and job creation. The rail industry welcomes this review because there are a number of existing rail-related regulations that are either unjustified on the basis of cost-benefit analysis or that simply serve no useful purpose. Money the rail industry is forced to spend to adhere to these regulations, a couple of which are discussed in more detail below, could be spent far more productively somewhere else. In other

areas, railroads face unnecessary uncertainty that serves as a disincentive to further investments. A few examples of these are discussed below as well.

#### Positive Train Control

I discussed the PTC issue in significant detail at this committee's March 17, 2011 hearing on the Rail Safety Improvement Act of 2008. For the purposes of this testimony, suffice it to say that even using the Federal Railroad Administration's estimates of the cost of installing and maintaining PTC systems — and the railroads believe the FRA's cost estimates are far too low — railroads will incur approximately \$20 in PTC costs for each \$1 in PTC safety benefits.<sup>5</sup> Moreover, the FRA's final rules implementing the PTC-related provisions of the RSIA impose onerous and unjustified requirements on railroads that are not consistent with the underlying statute or sound application of cost-benefit analysis. This is important because the cause of safety will not be advanced if resources are directed to programs or requirements that do little to improve safety, or if government mandates syphon resources that would have a more pronounced impact on safety improvements if spent elsewhere.

As we noted in our testimony on March 17, railroads are committed to meeting the 2015 deadline for implementing PTC, but it will be an enormous technical and financial undertaking. At the very least, to help railroads fund the huge costs associated with PTC, Congress should pass legislation that provides tax incentives for rail revitalization that could be applied to the cost of installing PTC.

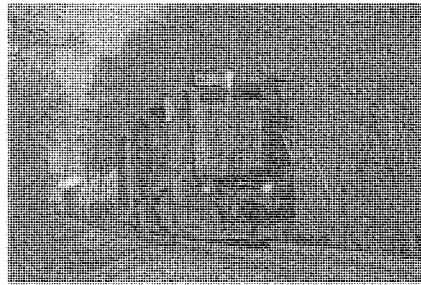
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<sup>5</sup> According to the FRA, railroads will have to spend around \$5 billion just to install PTC. As of this writing, railroads think a more realistic estimate of installation costs is \$5.8 billion for freight railroads and another \$2.4 billion for passenger railroads. Both the FRA and the railroads agree that PTC will require hundreds of millions of dollars each year to maintain. Estimating PTC implementation costs is so difficult primarily because PTC is still an emerging but extremely complex technology that is untested in terms of a real-world, day-to-day, multi-railroad environment.

#### 92-Day Locomotive Inspection

Another example of a regulation that should be modified regards locomotive inspections. Under existing regulations, the FRA requires railroads to inspect locomotives daily and to perform a much more comprehensive inspection every 92 days. In 2002, the AAR estimated that the 92-day inspection cost Class I railroads approximately \$350 million annually, and the daily inspections approximately \$60 million annually.

The concept of daily and periodic inspections dates back to the steam engine era. It may have been necessary for safety purposes then, but it is not now. Accidents attributable to locomotive defects are extremely rare — there were just 18 in 2010. Furthermore, no one can point to an analysis of the usefulness of the detailed inspection requirements in reducing locomotive accidents. In fact, AAR believes that no showing can be made that the daily and periodic inspections are necessary to keep the number of accidents attributable to locomotive defects low or to reduce them further.



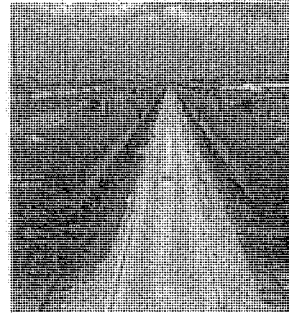
The modern diesel locomotive is very different from the steam locomotive and even from diesel locomotives manufactured 30 years ago. Today's locomotives are equipped with sophisticated self-diagnostic technology. Engines are monitored continuously. Better sealants and gaskets have led to fewer leaks, and safety appliances such as handholds and steps are more securely attached to locomotives. Defect detectors along the tracks also help monitor locomotive health. Importantly, today's locomotives are designed for semi-annual maintenance, not quarterly maintenance. Thus, neither safety nor mechanical considerations support a 92-day

periodic inspection.<sup>6</sup> It is clearly time to revisit the concept of daily and 92-day locomotive inspections.

#### Transport of Hazardous Materials

An area in which railroads face extreme uncertainty is the transport of hazardous materials, especially “toxic inhalation hazard” (TIH) materials. Under existing law, railroads have a “common carrier obligation” to carry TIH materials. This means that, under most circumstances, a railroad must transport TIH materials if a shipper asks it to, whether the railroad wants to or not. By contrast, trucks, barges, and airlines can refuse to transport these materials.

The problem is that every time a railroad transports TIH materials, it faces potentially ruinous liability risks if an inadvertent TIH release were to occur. In fact, history demonstrates that railroads can be subjected to multi-billion dollar liability claims for personal injury and property damage even when they do nothing wrong and are not the cause of a TIH release.



By forcing railroads to carry an excessive liability burden, the existing system insulates manufacturers and users of TIH materials from many of the risks they create. The existing system also forces railroads to assume risks they would not assume on their own without sufficient protection against those risks.

As long as railroads are forced to transport TIH materials, policymakers should address the enormous risks railroads are forced to assume. Policymakers can do this, among other ways,

<sup>6</sup> It is interesting to note that Transport Canada, which serves a similar purpose in Canada as the FRA does in the United States, does not require daily or periodic inspections, relying instead on inspections of locomotives as they are placed in trains. The rail operating environment in Canada does not differ in any relevant respect from the operating environment in the United States.

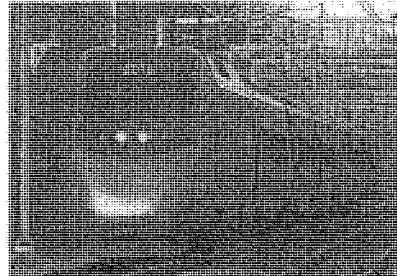
by creating a statutory liability cap for railroads. Another option is to create a fund, to which producers and end-users of TIH materials would contribute, to pay for damages above a certain amount, similar to "Price-Anderson" protections in the nuclear energy industry.

Railroads are not asking to be free from all liability related to TIH transport. Rather, they believe that those responsible for making and selling these dangerous chemicals, as well as those who benefit from their use, should share in the added liability and costs associated with transporting them.

#### Passenger Rail Challenges

Freight railroads provide the foundation for passenger rail. Each year, tens of millions of passenger trips are taken on passenger trains operating on tracks owned by freight railroads. But because America's economic health and global competitiveness would suffer if freight railroads were impaired by moving passengers on their tracks, great care must be taken going forward to ensure that the growth of passenger rail complements, rather than detracts from, the growth of freight rail.

An essential element of this is to ensure that freight railroads have adequate liability protection. An accident involving a passenger train on freight-owned property, though rare, could involve major casualties and potentially ruinous liability claims against the freight railroad. Because of this risk, freight railroads must be adequately protected from liability that results from the presence of passenger trains and that freight railroads would not have but for the presence of passenger trains. Legislation now before Congress would raise the existing \$200 million liability cap for all parties in the case of an



accident involving passenger trains to \$275 million. This legislation instills additional uncertainty that could end freight and passenger railroad cooperation in new passenger rail operations that involve freight-owned assets. Furthermore, legislation containing retroactive provisions could have a negative impact on both existing and new passenger rail operations.

In addition, freight railroads are also being asked to help facilitate the introduction and expansion of high-speed rail in corridors across the United States. The freight railroads support high-speed rail service where it makes economic sense: where the ridership exists, where it can be done safely, and where it does not disrupt service to freight customers. The most successful high-speed rail corridors in the world are those that are separated, sealed (*i.e.*, no highway-rail grade crossings), and dedicated solely to high-speed rail service.

#### Freight Fund

Proposals have been made to create a federal “freight fund” to finance the federal share of publicly supported freight-related projects. Railroads do not support freight fund proposals that would require freight railroads or rail shippers to pay into such funds.

As noted above, unlike airlines, trucks, and barges, freight railroads already pay the vast majority of the costs of building and maintaining their infrastructure. It wouldn’t make sense for railroads or their customers to pay into a “freight fund,” only to have the government dole the money — minus inevitable bureaucratic costs — back out. Railroads should not be required to assess or collect fees going into a freight fund, and no state and local government should impose such fees unless the parties involved agree otherwise.

#### Safety User Fees

Safety in most U.S. industries is regulated by the Occupational Safety and Health Administration, an agency of the U.S. Department of Labor. Safety in the rail industry, however,

is regulated mainly by the Federal Railroad Administration, an agency of the U.S. Department of Transportation. Today, funding for both OSHA and the FRA come from general appropriations.

For the FRA, it wasn't always this way. From 1991 until 1995, railroads paid fees to the FRA to cover many of the costs associated with the FRA's rail safety program. Total railroad payments during this period were approximately \$159 million, equivalent to around \$190 million in today's dollars.

Recognizing that these fees were unfair taxes in disguise, Congress eliminated them in 1995. Since then, there have been several legislative efforts to reintroduce the fees and expand their scope. Most recently, in its proposed 2012 budget, the Administration calls for the reintroduction of the FRA fees at a rate of some \$80 million per year. Each time since 1995 that FRA safety user fees have been proposed, key Congressional committees — acting on a bipartisan basis — have rejected them.

Railroads respectfully suggest that safety “user fees” were a bad idea when they were in place and would be a bad idea again:

- OSHA regulates workplace safety for most U.S. industries, but those industries do not pay user fees to OSHA. Thus, equity alone dictates that railroads should not have to pay safety “user fees” to the FRA.
- FRA “user fees” are nothing more than taxes in disguise, an attempt to shift to private industry the costs of government regulation designed to achieve public goals.
- Railroads already know that operating safely is their highest priority. Imposing safety “user fees” would not change this. Nor would it add any incentives to operating safely that railroads don't already have.
- The imposition of FRA “user fees” would make it that much harder for railroads to afford the new capacity they will need to meet America's growing freight transportation needs in the years ahead. This would be a serious problem at any time, but it would be an especially serious problem today when railroads are being called upon more than ever to help achieve key policy goals (such as reducing highway congestion and cutting fuel consumption and air pollution) and when the pressure to reduce government spending on just about everything — including transportation infrastructure — is greater than it has been in many years.

### Tax Incentives to Expand Rail Capacity

As they do today, freight railroads in the future will continue to pay essentially all the costs of their tracks, bridges, tunnels, and other infrastructure. However, there is a gap between the socially-optimal level of rail capacity and what railroads are likely to be able to afford on their own.

A sensible way to bridge the gap is to enact legislation that provides tax incentives for projects — such as new track, bridges, tunnels, and intermodal facilities — that expand freight rail capacity. All businesses that make capacity-enhancing rail investments, not just railroads, would be eligible. Costs associated with the recent unfunded Congressional mandate for railroads to install PTC systems should also be eligible for the tax incentive.

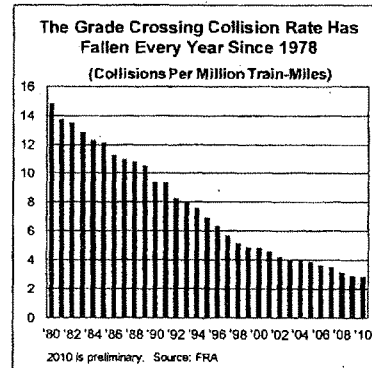
### **Keeping Programs That Work Well**

Several key transportation programs work well now and would continue to work well in the future, and thus should be included in new surface transportation reauthorization legislation.

### Grade Crossing Safety

Grade crossing collisions have fallen sharply over the years. In fact, from 1980 through 2010, the number of grade crossing collisions fell 81 percent, injuries associated with collisions fell 79 percent, and fatalities fell 69 percent. The grade crossing collision rate has fallen every year since 1978.

One of the reasons for this impressive improvement is the federal “Section 130” program. This program, which is named after a provision in an earlier federal highway bill, provides federal funds to states and local





governments to eliminate or reduce hazards at highway-rail grade crossings on public highways. According to the FRA, since its inception the Section 130 program has prevented tens of thousands of injuries and fatalities. Current set-aside funding is approximately \$220 million per year. The vast majority of Section 130 funds have been spent on the installation of new active warning devices such as lights and gates, upgrading existing devices, and replacing or improving grade crossing surfaces.

Without a set aside program, grade crossing needs would likely fare very poorly in competition at the state level with more traditional highway needs, such as highway capacity expansion and maintenance. In fact, the primary reason that a separate grade crossing safety improvement program was begun in 1974 was that highway safety, and especially crossing safety, received limited priority for available highway dollars.

Operation Lifesaver, a nationwide non-profit with chapters across the country, educates the public about the dangers of grade crossings and the hazards of trespassing on railroad property. It receives significant funding from railroads and other sources, as well as funding from the U.S. Department of Transportation. Federal support of Operation Lifesaver should continue.

The AAR and AASHTO earlier this week wrote a joint letter to this Committee urging the retention of the Section 130 program and funding for Operation Lifesaver. A copy of that letter is attached to this testimony as Appendix 1.

#### Short Line Tax Credit

H.R. 721 (the "Short Line Railroad Rehabilitation and Investment Act of 2011") in the current Congress would extend the "Section 45G" short line railroad tax credit. Originally enacted in 2004, Section 45G creates a strong incentive for short line railroads to invest private

sector dollars on freight railroad track rehabilitation and improvements. The credit is capped based on a mileage formula and is currently scheduled to expire at the end of the current 2011 tax year. Freight railroads respectfully urge members of this committee and other members of Congress to unite in support of legislation to extend this important credit.

#### The Congestion Mitigation and Air Quality Improvement Program (CMAQ)

The CMAQ program is intended to reduce transportation-related emissions by providing state transportation departments and local governments flexible options to fund emission reduction strategies. Over the years, CMAQ funds have been used to support the use of public transportation; promote efficient traffic movement; support educational campaigns; promote ride-sharing, bicycling, and pedestrian programs; fund automobile inspection and maintenance programs and fleet conversion efforts; and many other purposes.

Over the past few years, CMAQ has funded a few rail-related projects. A greater focus on freight-related projects would allow states to undertake innovative projects that accomplish CMAQ's goals, including use of CMAQ funds for environmental mitigation around railroad yards.

#### State and Local Freight Planning

Transportation projects that involve federal funds are prioritized by state planning organizations and, in the case of urban projects, by metropolitan planning organizations (MPOs). The planning process is very useful, allowing for continuing, cooperative efforts by local stakeholders to achieve effective transportation solutions. Unfortunately, transportation planning typically focuses almost exclusively on moving passengers, with scant attention paid to freight. To address this deficiency, Congress should continue to encourage planning organizations to

consider freight transportation needs, including railroad projects and intermodal projects, more fully in their planning.

#### Public-Private Partnerships for Rail Infrastructure Projects

Today more than ever, America needs safe, affordable, and environmentally sound transportation options. Public-private partnerships combine public and private resources for specific projects to help make this happen.

With public-private partnerships, the public entity devotes public dollars to a project equivalent to the public benefits that will accrue. The private railroads contribute resources commensurate with the private gains expected to accrue. The result is a substantial expansion of the universe of projects that may be undertaken to the benefit of all parties.

Since railroads contribute funding commensurate with the benefits they receive, public-private partnerships are not



“subsidies” to railroads. In some partnerships, public entities and private railroads both contribute to a project’s initial investment, but the railroad alone is responsible for funding future maintenance to keep the project productive and in good repair. Continued use of public-private partnerships would allow additional worthwhile projects to go forward.

#### **Conclusion**

The reauthorization of SAFETEA-LU presents a great opportunity for policymakers to encourage more freight to move by rail — and therefore generate more of the huge public benefits that freight railroading brings.

In the years ahead, meeting our nation's transportation demands will be a tremendous challenge. Meeting this challenge — while minimizing congestion and emissions and maximizing safety and energy efficiency — will be a critical and difficult task. If not done effectively, it will weigh heavily on our nation's productivity and quality of life. Enhanced freight rail transportation must be part of the solution. While railroads have made tremendous strides in improving their ability to serve their customers efficiently and reliably, meeting the daunting challenges of operating a rail system capable of addressing future needs will require effective public policies that support those goals. Freight railroads look forward to working with this committee, others in Congress, and other appropriate parties to develop a surface transportation reauthorization which best meets this country's transportation needs.



April 5, 2011

The Honorable John L. Mica  
Chairman  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Nick J. Rahall  
Ranking Member  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John J. Duncan  
Chairman  
Highways and Transit Subcommittee  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Peter A. DeFazio  
Ranking Member  
Highways and Transit Subcommittee  
Transportation and Infrastructure Committee  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressmen:

On behalf of our organizations – the American Association of State Highway and Transportation Officials (AASHTO) and the Association of American Railroads (AAR) – we are opposed to proposals to eliminate dedicated funding for the section 130 highway grade-crossing safety program. Both AASHTO and AAR believe that funding for this program should remain as a set-aside program. It fulfills unique function in addressing both safety and productivity objectives relating to intersections between the highway and railroad modes. We continue to support the program in its current form and funding level, or at a level proportionate to the funding level of the reauthorized surface transportation program.

The Highway Safety Act of 1973 created Section 130 to enhance safety at highway-rail at-grade crossings. Under the program, at least \$220 million has been apportioned each year to states for installing new warning devices, upgrading existing devices, and replacing and improving grade-crossing surfaces. The Federal Highway Administration estimates that over 10,500 lives have been saved and an estimated 51,000 serious injuries avoided through this program since its inception in 1974.

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Among the factors pointing to program success is the dramatic reduction in grade-crossing collisions that have occurred. Let's look at the resulting statistics:

- In 1978, there were roughly 14,000 grade-crossing collisions; in 2009 that number dropped to some 1,900 collisions.
- Fatalities dropped from 1,178 in 1976 to just under 250 in 2009.
- Injuries dropped from a high of over 4,600 in 1977 to just over 700 in 2009.

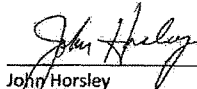
Eliminating the funding for the Section 130 program and thus effectively eliminating the program would risk reversing these remarkable safety gains.

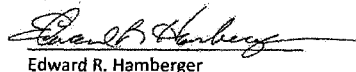
Additionally, AASHTO and AAR support the continued funding of a coordinated national Operation Lifesaver program through the Highway Trust Fund, now authorized at an annual level of \$560,000. This public information and education program is an essential tool in the prevention of motor vehicle accidents, injuries and fatalities at highway-rail at-grade crossings and provides some essential grant funding, guidance, and expertise to state programs. With forecasts calling for a substantial boost in the amount of freight and the numbers of passengers to move by rail in the near future, safeguarding American pedestrians and motorists around railroad crossings remains of urgent and paramount importance.

Finally, AASHTO and AAR propose increasing the maximum amounts payable in incentives for permanently closing highway-rail at-grade crossings from \$7,500 per location to a maximum amount equal to one-half of the estimated cost of the signal or crossing improvement project. Under this change, the dollar-for-dollar railroad match should be retained as an option, but not as a requirement for the states. The Federal funds would continue to be limited to safety-related purposes, and allowing the railroads to participate in such projects through contribution of in-kind services, assets, or cash would provide more flexibility to railroads and to states and bring additional value through the program for sustainable highway and railroad crossing safety improvements.

Don't penalize success and risk losing the unique value and importance of the Section 130 program. AASHTO and AAR urge you to support the continued dedicated funding for the Section 130 grade-crossing program and Operation Lifesaver. Let's continue to build on our work to date to further enable the states and railroads to carry out the important mission of improved highway-rail crossing safety.

Sincerely,

  
John Horsley  
Executive Director  
American Association of State Highway  
And Transportation Officials

  
Edward R. Hamberger  
President and CEO  
Association of American Railroads



April 5, 2011

The Honorable Barbara Boxer  
Chairman  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

The Honorable James Inhofe  
Ranking Member  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

The Honorable Max Baucus  
Chairman  
Transportation and Infrastructure Subcommittee  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

The Honorable David Vitter  
Ranking Member  
Transportation and Infrastructure Subcommittee  
Environment and Public Works Committee  
United States Senate  
Washington, D.C. 20510

Dear Senators:

On behalf of our organizations – the American Association of State Highway and Transportation Officials (AASHTO) and the Association of American Railroads (AAR) – we are opposed to proposals to eliminate dedicated funding for the section 130 highway grade-crossing safety program. Both AASHTO and AAR believe that funding for this program should remain as a set-aside program. It fulfills unique function in addressing both safety and productivity objectives relating to intersections between the highway and railroad modes. We continue to support the program in its current form and funding level, or at a level proportionate to the funding level of the reauthorized surface transportation program.

The Highway Safety Act of 1973 created Section 130 to enhance safety at highway-rail at-grade crossings. Under the program, at least \$220 million has been apportioned each year to states for installing new warning devices, upgrading existing devices, and replacing and improving grade-crossing surfaces. The Federal Highway Administration estimates that over 10,500 lives have been saved and an estimated 51,000 serious injuries avoided through this program since its inception in 1974.

Page 2  
April 5, 2011

Among the factors pointing to program success is the dramatic reduction in grade-crossing collisions that have occurred. Let's look at the resulting statistics:

- In 1978, there were roughly 14,000 grade-crossing collisions; in 2009 that number dropped to some 1,900 collisions.
- Fatalities dropped from 1,178 in 1976 to just under 250 in 2009.
- Injuries dropped from a high of over 4,600 in 1977 to just over 700 in 2009.

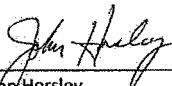
Eliminating the funding for the Section 130 program and thus effectively eliminating the program would risk reversing these remarkable safety gains.

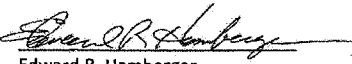
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Finally, AASHTO and AAR propose increasing the maximum amounts payable in incentives for permanently closing highway-rail at-grade crossings from \$7,500 per location to a maximum amount equal to one-half of the estimated cost of the signal or crossing improvement project. Under this change, the dollar-for-dollar railroad match should be retained as an option, but not as a requirement for the states. The Federal funds would continue to be limited to safety-related purposes, and allowing the railroads to participate in such projects through contribution of in-kind services, assets, or cash would provide more flexibility to railroads and to states and bring additional value through the program for sustainable highway and railroad crossing safety improvements.

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Sincerely,

  
John Horsley  
Executive Director  
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President and CEO  
Association of American Railroads



**National Transportation Safety Board**

490 L'Enfant Plaza, SW  
Washington, D.C. 20594  
(202) 314-6000



**Christopher A. Hart**  
**Vice Chairman**

**Testimony of the Honorable Christopher A. Hart  
Vice Chairman  
National Transportation Safety Board  
Before the  
Subcommittee on Railroads, Pipelines, and Hazardous Materials  
Committee on Transportation and Infrastructure  
United States House of Representatives  
Hearing on  
Railroad and Hazardous Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens  
Washington, DC  
April 7, 2011**

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Good morning Chairman Shuster, Ranking Member Brown, and the Members of the Subcommittee. Thank you for the opportunity to appear before you today on behalf of the National Transportation Safety Board (NTSB) regarding safe rail transportation and the safe transportation of hazardous materials. Today, I would like to highlight some specific issues of concern to the NTSB.

**Positive Train Control (PTC)**

For nearly 40 years, the NTSB has investigated numerous train collisions and over-speed derailments caused by operational errors involving human performance failures. In one year alone, the NTSB investigated 5 such accidents: Graniteville, SC; Anding, MS; Shepherd, TX; Chicago, IL; and Texarkana, AR. The NTSB attributed these human performance failures to a variety of reasons, including fatigue, sleeping disorders, use of medication, loss of situational awareness, reduced visibility and distractions in the operating cab such as the use of cell phones. Many of these accidents occurred after train crews failed to comply with train control signals, failed to follow operating procedures in non-signalized or "dark" territories, or failed to comply with other specific operating rules such as returning track switches to normal position after completing their work at railroad sidings.

To address human performance deficiencies, the NTSB has advocated for the implementation of a system that compensates for human error and incorporates collision avoidance. The NTSB has repeatedly concluded that technological solutions, such as a positive train control system, have great potential to reduce the number of serious train accidents by providing safety redundant systems to protect against human performance failures. The NTSB has issued several recommendations specifically supporting the implementation of PTC, especially on tracks where both passenger and freight trains operate. The objective of PTC is to prevent train collisions and over-speed accidents by requiring automatic control systems to override mistakes by human operators. This is a worthwhile goal to pursue, and the NTSB remains committed to the goal of implementing a safety redundant system.

Because of the NTSB's repeated findings that technology based collision avoidance systems could provide the needed safety redundancy to prevent accidents, PTC was placed on the NTSB Most Wanted List of Transportation Safety Improvements at its inception in 1990. Following the

tragic head-on collision between a passenger train and a freight train in Chatsworth, California, on September 12, 2008, which resulted in 25 fatalities and more than 130 injuries, Congress enacted the Rail Safety Improvement Act of 2008 (RSIA). This law requires each Class I railroad over which poisonous-by-inhalation (PIH) or toxic-by-inhalation (TIH) hazardous materials is transported and regularly scheduled intercity or commuter rail passenger transportation travels to implement a PTC system by December 31, 2015.<sup>1</sup> Encouraged by this legislative action, the NTSB's Safety Recommendation calling for PTC to be installed on railroads, was classified as closed and was removed from the Most Wanted List in October 2008.

While this specific recommendation was closed, the NTSB remains committed to the safety benefits of PTC. The NTSB is on the record in support of this technology and remains supportive. In fact, four NTSB safety recommendations regarding PTC remain open.<sup>2</sup>

The NTSB continues to monitor the implementation of the PTC Congressional mandate. To that end, the NTSB commented on a 2009 Federal Railroad Administration (FRA) rulemaking about the importance of PTC systems for passenger and freight railroads. The NTSB reiterated its support for PTC systems that include train separation, speed and signal enforcement, rail roadway worker protection, and protection from running through misaligned switches. The NTSB believes this proposed rule will improve safety by creating a safety redundancy for human performance failures. The NTSB also commented on the importance of ensuring interoperability of PTC systems.

In 2010, the NTSB again emphasized its support for the safety benefits of appropriate and fully deployed PTC. Currently, FRA has the flexibility to review, modify, or retire conventional signal systems through Part 235 of its regulations and has successfully used this authority. The NTSB believes this authority can be used to review amendments to PTC required installation on a case-by-case basis rather than granting blanket exemptions. We have found that lives can be saved and destruction prevented through this safety redundant system.

Also, as a result of the NTSB's longstanding interest in this issue, the NTSB participated, as a non-voting technical advisor, in the FRA's, Rail Safety Advisory Committee (RSAC) PTC working group meetings. This group's goal was to develop regulatory language for processor-based signal and train control safety standards, which include PTC systems. After several years of work on this issue, FRA promulgated regulations to support the *voluntary* introduction of innovative technology, including systems utilizing computers and radio data links, to accomplish PTC functions. In 2005, NTSB held a symposium on PTC to learn about the industry's progress on

<sup>1</sup> Not all hazardous material shipments by rail fall under the TIH class. In fact, there is a significant amount of other hazardous materials shipped by rail that could be involved in a train accident, resulting in potential catastrophic damage.

<sup>2</sup> To METRA (Northeast Illinois Regional Commuter Railroad): Install a positive train control system on your commuter train routes. (R-05-013)

To the Canadian National Railway: Develop and implement a positive train control system that includes collision avoidance capabilities on main line tracks, establishing priority requirements for high-risk corridors such as those where passenger trains operate. (R-07-007)

To the Massachusetts Bay Transportation Authority: Develop and implement a positive train control system for all your rail lines. (R-09-014)

To CSX Transportation Inc.: Develop and install a positive train separation control system on track segments that have commuter and intercity passenger trains. (R-97-026)

this issue and to reinvigorate dialogue among rail carriers, component manufacturers and government agencies. Some railroads were moving to develop PTC systems. In January 2007, the FRA approved a BNSF Railway project for its Electronic Train Management System (ETMS), an overlay technology that augments an existing train control method.

In December 2008, the RSAC was asked to provide advice on the best way to implement PTC. This task was referred to the PTC working group for the purpose of providing advice regarding the development of regulations for PTC systems and their deployment under the RSIA. NTSB provided technical assistance in the development of the PTC regulations and on July 21, 2009, FRA published the previously referenced Notice of Proposed Rulemaking (NPRM).

In addition to addressing train collisions and overspeed derailments, the RSIA requires implementation of PTC systems that prevent incursions into established work zone limits and the movement of a train through a switch left in the wrong position. These are additional areas where NTSB believes PTC can enhance railroad safety. The severity of these type of accidents was highlighted when a freight train collided with a standing train in Graniteville, South Carolina after being diverted into an occupied siding by a switch that was left in the wrong position by a crew working in the siding earlier. As a result of the accident, a tank car filled with chlorine was punctured, releasing a cloud of chlorine gas into the town, killing nine persons including the locomotive engineer.

#### **Transit**

The NTSB has issued several recommendations to the Federal Transit Administration (FTA) and its predecessor agencies, addressing the need for the FTA to promulgate regulations and to establish mandatory safety guidelines and requirements for recipients of FTA funding. It has been the longstanding position of the FTA that it does not have the legal authority to promulgate regulations or to require an entity that receives funding through the FTA to comply with its guidelines and recommended best practices as a condition of federal financial assistance. The extent of the FTA's efforts to this point has been to encourage recipients to adhere to industry best practices and recommendations made by the NTSB.

Following the tragic accident that occurred in Washington, DC on June 22, 2009, when a Washington Metropolitan Area Transit Authority Metrorail train struck the rear of a stopped Metrorail train, the NTSB made the following safety recommendation to the U.S. Department of Transportation (DOT):

Continue to seek the authority to provide safety oversight of rail fixed guideway transportation systems, including the ability to promulgate and enforce safety regulations and minimum requirements governing operations, track and equipment, and signal and train control systems. (R-10-3)

The NTSB has previously issued recommendations to the FTA:

Develop transit railcar design standards to provide adequate means for safe and rapid emergency responder entry and passenger evacuation. (R-06-005)

Develop minimum crashworthiness standards to prevent the telescoping of transit railcars in collisions and establish a timetable for removing equipment that cannot be modified to meet the new standards. (R-06-06)

The NTSB continues to support legislation that would direct the DOT, in consultation with the NTSB, to establish federal safety standards for rail transit systems.

#### **Air Transportation of Lithium Batteries**

There are two types of lithium batteries: primary and secondary. Primary lithium batteries are non-rechargeable and they are commonly used in items such as watches and pocket calculators. They contain metallic lithium that is sealed in a metal casing. The metallic lithium will burn when exposed to air if the metal casing is damaged, compromised, or exposed to sustained heating. Secondary lithium batteries, also known as lithium-ion batteries, are rechargeable and are commonly used in items such as cameras, cell phones, laptop computers, and hand power tools. Secondary lithium batteries contain electrically charged lithium atoms, or ions, in a flammable liquid electrolyte. Overheating of the battery can result in the ignition of the flammable electrolyte. Another type of secondary battery, known as lithium polymer batteries, contains a flammable polymeric material rather than a liquid, as the electrolyte. Halon suppression systems, the only fire suppression systems certified for aviation, are not effective in extinguishing fires involving primary lithium batteries but can be effective in extinguishing fires involving secondary lithium batteries.

The demand for primary and secondary lithium batteries has skyrocketed since the mid-1990s as the popularity and use of electronic equipment of all types has grown. As the use of lithium batteries has increased, the number of incidents involving fires or overheating of lithium batteries, particularly in aviation, has likewise grown. The NTSB has investigated three such aviation accidents: Los Angeles, CA; Memphis, TN; and Philadelphia, PA.

The fires in these accidents included both primary and secondary lithium batteries, and the NTSB issued several recommendations as a result of these investigations. As a result of its investigation of the Los Angeles and Memphis incidents, the NTSB recommended that the Pipeline and Hazardous Materials Safety Administration (PHMSA), with the Federal Aviation Administration (FAA), evaluate the fire hazards posed by lithium batteries in an aviation environment and require that appropriate safety measures be taken to protect the aircraft and occupants. The NTSB also recommended that packages containing lithium batteries be identified as hazardous materials, including appropriate labeling of the packages and proper identification in shipping documents when transported on aircraft. These recommendations have been closed with acceptable action by the regulator.

Following the Philadelphia accident, the NTSB issued six safety recommendations urging PHMSA to address the problems with lithium batteries on a number of fronts, including reporting all incidents; retaining and analyzing failed batteries; researching the modes of failure; and eliminating regulatory provisions that permit limited quantities of these batteries to be transported without labeling, marking, or packaging them as hazardous materials. In January 2008, the NTSB issued additional recommendations to PHMSA and the FAA to address the NTSB's concerns about

the lack of public awareness about the overheating and ignition of lithium batteries. PHMSA issued a NPRM on January 11, 2010 to address some of these recommendations. The NTSB commented on this notice, but no final rule has been issued. Of the six recommendations issued, one (A-07-106) has been classified "Closed—Acceptable Action," two (A-07-105 and -109) classified "Open—Acceptable Response" and three (A-07-104, -107, and 108) classified "Open—Unacceptable Response."

Most recently, in September 2010, a UPS cargo plane crashed in Dubai. The United Arab Emirates (UAE) is leading this investigation, and this week they issued a preliminary accident report in which they state that no hazardous materials were declared as cargo on the flight despite at least 3 shipments of lithium ion battery packs that meet Class 9 hazardous material designation.<sup>3</sup> In this report, the UAE also recommends appropriate declaration, stowage, and handling of lithium batteries carried in flight. The investigation is on-going.<sup>4</sup>

Another recent development with regard to lithium batteries occurred just last week when the U.S. House of Representatives passed H.R. 658, the FAA Reauthorization bill. It contains a provision that U.S. hazardous materials regulations on the air transportation of lithium metal cells or batteries or lithium ion cells or batteries could not exceed the International Civil Aviation Organization *Technical Instructions for the Safe Transport of Dangerous Goods by Air*. The NTSB notes DOT has for some years worked to ensure that the U.S. hazardous materials regulations are compatible with international standards and, accordingly, has been very active in the development of international standards for the transportation of hazardous materials. However, the DOT has never relinquished its rulemaking authority to an international body. The NTSB concurs with that position and believes the DOT should continue to implement more stringent standards in U.S. regulations if deemed necessary.

#### **Wet Lines on Highway Cargo Tanks**

Presently, each external product pipe or wet line on a cargo tank semitrailer transporting flammable liquid may contain as much as 50 gallons of product directly underneath a fully loaded cargo tank. Because the wet lines are designed to break away in order to prevent damage to the tank shell, the lines could release a substantial amount of product on a striking passenger vehicle, which may be trapped beneath the cargo tank and engulfed in a fire.

In 1978, the Office of Motor Carrier Safety within the Federal Highway Administration established a policy allowing gasoline to be carried in wet lines because of "economic and practicality considerations." In 1985, PHMSA published a NPRM that increased the bottom accident damage protection for cargo tanks, including wet lines. In 1988, in the process of developing the final rule, PHMSA staff prepared an issue outline memorandum that discussed the external piping issue. The memorandum noted:

<sup>3</sup><http://www.gcaa.gov/ac/en/ePublication/admin/iradmin/Lists/Incidents%20Investigation%20Reports/Attachments/16/2010-Preliminary%20Report%20B747-400F%20-%20N571UP%20-%20Report%20132010.pdf>

<sup>4</sup> Foreign investigative entities have authority equivalent to the NTSB under ICAO Annex 13. For this accident, in particular, the NTSB has been involved as the accredited representative as the State of Operator, Registration, and Manufacturer. The operator, manufacturers, and regulator (FAA) are technical advisors to the NTSB accredited representative. The NTSB plans to issue recommendations based on the findings of the UAE investigation.

It is unreasonable and illogical to allow the piping to be considered as an acceptable container for the transport of gasoline. Therefore, the petroleum industry's decision to bottom load in compliance with the Clean Air Act and their unwillingness or inability to drain the cargo lines has resulted in widespread non-compliance with the intent and letter of the *Hazardous Materials Regulations* as interpreted by RSPA [PHMSA] for the transportation of gasoline.

In the final rule in 1989, PHMSA noted that wet lines were not appropriate packaging for hazardous materials.

In addressing comments from the petroleum industry regarding the infrequency of accidents resulting in damage to the wet lines and the loss of lading, PHMSA responded that although such accidents were infrequent, the consequences of such accidents could be substantial, especially given that they would likely occur on neighborhood streets in residential areas. PHMSA encouraged the petroleum industry to consider and evaluate all possible ways to eliminate this risk in the most cost effective manner. The American Petroleum Institute (API) replied that the analysis of wet line accident statistics indicates that the probability is quite low that a fatality will be directly attributed to a wet line failure. Based on the results of its analysis, API cancelled a study to evaluate alternate means of loading cargo tanks that would result in dry loading lines. Consequently, PHMSA prohibited the transportation of poison B liquids, oxidizer liquids, liquid organic peroxides, and liquid corrosives in wet lines, but allowed gasoline and petroleum products in external unprotected wet lines. PHMSA justified the exception for gasoline by the lack of sufficient accident data and the inadequacy of information concerning possible alternative procedures and/or equipment.

Subsequent to this rulemaking activity, the NTSB investigated two accidents in which wet lines were damaged, and gasoline in the wet lines was released and ignited. As a result of these investigations, the NTSB recommended that PHMSA prohibit the carrying of hazardous materials in external piping of cargo tanks, such as wet lines, which may be vulnerable to failure in an accident.<sup>5</sup>

On July 1, 2009, NTSB investigated another accident involving wetlines. In this accident a cargo tank truck was struck by a car in Upper Pittsgrove, New Jersey, and the driver of the car was fatally injured in a fire as a result of the release of gasoline from the wetlines.

In December 2004, PHMSA published a NPRM addressing the transportation of flammable liquids in external wet lines. In its March 5, 2005, comment letter to PHMSA on the NPRM, the NTSB stated (1) that it did not believe that reliance upon impact damage protection devices for wet lines would provide the greatest level of safety and (2) that the hazards from wet lines full of a hazardous cargo can be more effectively eliminated if the wet lines are purged of the cargo. On June 7, 2006, PHMSA published a notice withdrawing the NPRM.

On July 31, 2007, PHMSA advised the NTSB that while it would not eliminate wet lines, it developed an outreach program focused on best practices for fueling operations, maintenance procedures, and other safeguards. PHMSA also advised that it was working with industry to refine

<sup>5</sup> Safety Recommendation H-98-027

data on the wet line issue. While recognizing these increased activities, the NTSB advised PHMSA on September 4, 2008, that these actions still do not address the need to eliminate wet lines and that they do not satisfy the NTSB's 1998 recommendation.

On January 27, 2011, PHMSA published a NPRM that proposed to prohibit the transportation of flammable liquids in wet lines on cargo tank trucks unless the trucks are equipped with bottom damage protection. Under the proposed rulemaking, this prohibition would not be required for straight trucks or cargo tank trucks transporting combustible liquids.<sup>6</sup> The NTSB is in the process of commenting on the proposed rulemaking.

#### **Loading and Unloading of Hazardous Materials from Railroad Tank Cars and Highway Cargo Tanks**

The NTSB investigated eight accidents involving the loading or unloading of highway cargo tanks or railroad tank cars between June 1998 and August 2003. In these accidents, the NTSB found that DOT failed to establish and oversee compliance with adequate safety requirements for unloading hazardous materials. Also, the NTSB found inadequate inspection and maintenance of cargo transfer equipment.

In an NPRM issued on June 14, 2001, PHMSA stated that loading and unloading bulk liquid containers such as tank cars and highway cargo tanks generally were not transportation activities and, therefore, were not subject to the *Hazardous Materials Regulations*. The NPRM was strongly opposed by many carriers and shippers of hazardous materials who were concerned the NPRM, if implemented, would replace a national system of uniform and consistent regulations with differing regional standards established by local jurisdictions, the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA).

The NTSB also strongly opposed the NPRM. In comments, the NTSB stated the NPRM would clearly reverse the statutory and regulatory definition for the transportation of hazardous materials as "the movement of property and loading, unloading, or storage incidental to that movement." Furthermore, the NTSB stated its belief that the DOT had both the statutory mandate and the authority to regulate loading and unloading operations. The NTSB also stated that the proposed rules "may result in the elimination of effective Federal oversight" of these operations and that "DOT should strengthen its oversight rather than ignore these issues." In the fall of 2002, OSHA notified the NTSB of its willingness to work with the DOT to review the adequacy of current requirements and to identify any gaps or inconsistencies that may exist and endanger the safety of workers. PHMSA published the final rules on October 30, 2003, with virtually no changes from the NPRM.

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<sup>6</sup> Flammable liquids can easily catch fire under normal circumstances with the help of minimal ignition source. Flammable liquids have a flash point of 100°F or less. Combustible liquids require more vigorous conditions to burn. Combustible liquids have a flashpoint above 100°F.



In the fall of 2006, the PHMSA administrator reexamined the issue and directed PHMSA staff to establish a working group of government and industry representatives to develop recommended practices for loading and unloading of these bulk liquid tanks. On January 4, 2008, PHMSA published a notice requesting comments on the "proposed recommended practices" that had been developed. PHMSA stated in the notice that between 2004 and 2006, bulk loading and unloading operations accounted for 27 percent of all serious unintentional release accidents.

Although the 2008 proposed practices are comprehensive, the NTSB is still concerned that the practices would not be enforceable because they are not required. On March 11, 2011, PHMSA published a NPRM that proposes to amend the hazardous materials regulations to require motor carriers and facilities that engage in cargo tank loading and unloading operations to develop and implement safe operational procedures. Additionally, PHMSA is proposing additional training and qualifications for employees who engage in cargo tank loading and unloading operations. While the NTSB is in the process of reviewing and preparing our comments on this NPRM, it should be noted that the proposed rule only addresses loading and unloading of hazardous materials from highway cargo tanks and does not address railroad cargo tanks or other bulk containers. PHMSA has stated that they plan to address these types of containers through separate rulemakings.

#### Highway Cargo Tank Rollovers

Since its inception the Safety Board has been investigating rollovers involving cargo tank trucks. Shortly after the NTSB was formed, a team was launched in 1969 to investigate the rollover and fire involving a truck-tractor in combination with a cargo tank semi-trailer carrying 9,257 gallons of liquefied petroleum gas. At rest, the overturned cargo tank impeded the southbound lanes and shoulder of the New Jersey Turnpike and triggered a multiple fatal crash involving 29 vehicles.

Today, we are investigating another tank truck rollover that occurred in Indianapolis in 2009 involving the release and explosion of liquefied petroleum gas. The Indianapolis accident caused damage to the overpass, including separating a bridge pier, but luckily, did not result in any fatalities. However, tank truck rollover accidents often do produce fatalities. For example, although cargo tank vehicles represent only 6 percent of large trucks,<sup>7</sup> they account for 31 percent of all fatal truck rollover crashes.<sup>8</sup> One characteristic that makes cargo tank vehicles susceptible to rollover is the high center of gravity. According to a recent Battelle study, lowering the center of gravity of a cargo tank by three inches can reduce the incidence of rollovers by more than 10 percent.<sup>9</sup>

Another factor associated with cargo tank vehicle rollovers is some form of driver error which accounts for 78 percent of cargo tank rollovers.<sup>10</sup> Safety bulletins and training videos have been developed to educate and raise the awareness of cargo tank drivers,<sup>11</sup> but given that 66 percent

<sup>7</sup> *Tank Truck Drivers: This Sign's for You!*, Safety News, FMCSA, May 13, 2008

<sup>8</sup> *Vehicle Inventory and Use Survey*, 2002 Economic Census, United States Department of Commerce, December 2004

<sup>9</sup> *Cargo Tank Roll Stability Study*, Final Report, FMCSA, April 30, 2007

<sup>10</sup> *Tank Truck Drivers: This Sign's for You!*, Safety News, FMCSA, May 13, 2008

<sup>11</sup> *Anything other than Full or Empty*, On Guard, Office of Motor Carriers, FHWA, Vol. 23, No. 2, March 1995

of cargo tank rollovers involve drivers with more than 10 years of driving experience, it seems that training cannot prevent all rollovers.<sup>12</sup>

Factors that should be considered to prevent tank truck rollovers include:

1. The capability and limitations of electronic stability control systems;
2. The role of driver training and testing;
3. Roadway factors;
4. Protection of highway bridge piers from vehicle impacts;
5. Vehicle design changes for improving dynamic stability and rollover threshold; and
6. Crashworthiness standards for cargo tanks that transport high-risk hazardous materials.

#### **Conclusion**

Mr. Chairman, the NTSB has a long record of support for PTC, enhanced safety authority for the DOT, safe transportation of lithium batteries, eliminating wet lines, safe loading and unloading of hazardous materials from railroad tank cars and highway tank trucks, and reducing cargo tank truck rollovers. As you know, our mission is to promote safety, and I know that the implementation of our recommendations in these areas would promote and improve safety.

Thank you for the opportunity to testify before you today.

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<sup>12</sup> *Tank Truck Drivers: This Sign's for You!*, Safety News, FMCSA, May 13, 2008



TESTIMONY OF THOMAS A. HART, JR., ESQ.  
VICE PRESIDENT FOR GOVERNMENT AFFAIRS AND GENERAL COUNSEL  
US HIGH SPEED RAIL ASSOCIATION  
To US House of Representatives, Subcommittee on Railroads, Pipelines, and Hazardous Materials,  
Chairman Bill Shuster Presiding

Thursday, April 7, 2011

On behalf of the United States High Speed Rail Association (USHSR), its President, Andy Kunz, and its 250 members, I extend greetings to this prestigious Subcommittee on Railroads, Pipelines, and Hazardous Materials. I am here representing USHSR as its Vice President for Government Affairs and General Counsel. I also serve as the Director of the Washington office of the national law firm of Quarles & Brady. The USHSR is a non-profit trade association committed to advancing a state-of-the-art nationwide "true" high speed rail (HSR) system - to be completed in phases around the country. Our mission is to build widespread public, business, and political support for major investments in a national HSR network.

**I. BACKGROUND**

The USHSR is pleased to share its thoughts on how to expedite the development of HSR in the United States. On January 27th, I had the pleasure to testify in NYC before the full Committee's first hearing of this Congress. Following that hearing, USHSR hosted an international summit featuring Committee Chairman John Mica, Subcommittee Chairman Bill Shuster and Ranking Member Corrine Brown, and 400 attendees in DC that focused on the deployment of HSR. The conference yielded

much support and enthusiasm for building a true HSR system in America that is financed by both the public and private sectors. We are delighted today to offer model legislation to establish federal programs that will assist in the rapid creation of a true HSR system funded in part by innovative public-private partnerships.

This national HSR system will revive our economy and manufacturing sector by creating millions of new jobs. It will be the catalyst for the next national real estate boom as well as significantly reduce our dependence on foreign oil, shrink our national carbon footprint, and create efficient mobility that is safe and affordable for its passengers. Aside from these great benefits, is the desire to keep America more competitive through the constant development and ingenuity of its transportation systems as President Obama and Vice President Biden often remark.

Presently, most of our national transportation systems are overloaded and in a state of disrepair - which causes delays - costing the nation more than \$100 billion dollars per year in lost time and wasted fuel. The price of oil is already trading over \$100 dollars a barrel, and is expected to continue rising indefinitely. The quicker America can build alternative forms of transportation not dependent on foreign oil, the better the nation will be and the sooner we can recover from the current recession. Ironically, increased oil prices translate into increased rail ridership, which in turn improves the business case for HSR. We have already seen this happen in the summer of 2008 when oil hit \$147 per barrel, and the ridership on America's rail systems rose to record levels. With the right development and adequate investment in HSR, a vast consumer base can be tapped into for a true HSR line that can deliver safe, efficient, and faster travel.

The popular Washington, DC to Boston passenger train route, otherwise known as the Northeast Corridor is particularly ideal for HSR investments not only because it stretches across seven states totaling 480 miles, it has the most robust ridership level from a population of approximately 50

million. In 2009, Amtrak's daily rail ridership in the Northeast Corridor was more than 27,000 passengers. Economically strong, the Northeast Corridor has among the highest income levels per capita in the nation. Such demographics make the Northeast Corridor ripe for HSR development and investment by the private sector.

## II. THE NEED FOR PRIVATE INVESTMENT IN HSR

The debate is now how do we fund one of America's most important infrastructure projects. With the continuing economic and political climate focused on reducing public spending and the challenges in attempting to balance the budget, the future of HSR development in America will depend, in part, upon private sector investment. As you know, over the past two years there has been a renewed commitment for federal investment in rail transportation, but more capital is needed to ensure a successful project that meets the expectations of consumers in an efficient and profitable manner. In essence, there must be an on-going federal HSR program established to signal that this project is one of "National Significance" similar to the way the transcontinental railroad and the interstate highway system were built. Moreover, public-private partnerships are needed to carry out this important national program and global experience shows that they can be successful.

Last year, the UK government auctioned off a 30-year concession for the right to own and operate its first high speed railway, the HS-1, linking London to the Channel Tunnel. The sale generated approximately \$3.4 billion dollars<sup>1</sup> and was sold to a consortium of two Canadian pension funds - Borealis Infrastructure and the Ontario Teacher's Pension Plan. The concession sale is estimated to return 40 percent of the original construction cost to the British treasury.<sup>2</sup> Such savings is

<sup>1</sup> Mark Reutter, British Deal Shows Private Investment Demand for High-Speed Rail, PROGRESSIVE FIX (December 10, 2010) available at <http://www.progressivefix.com/british-deal-shows-private-investment-demand-for-high-speed-rail>.

<sup>2</sup> *Id.*

likely to help reduce the British government's record deficit. In 2040 - when the concession ends, the railway reverts back to the government, which anticipates re-bidding it for an equal or higher price. "[O]ver the course of its 150-year-plus lifecycle, [HS-1] repays its construction cost, probably several times over."<sup>3</sup> Reportedly, the "higher-than-expected bids for the UK's only dedicated [HSR] line revealed [a] strong demand for such assets" and demonstrates an alternative solution to funding HSR development, especially in the Northeast Corridor which has one of the densest market of riders.<sup>4</sup>

Although there has not been public-private partnerships undertaken in the American railroad industry for over 80 years, there have been several other developments of transportation infrastructure in a similar manner such as in the development of toll roadways or parking concessions. In establishing creative public-private partnerships, governments can tap into the \$500 billion that is currently available for investment in such projects from private financial institutions on Wall Street, in pension funds, and in the banking sector. Furthermore, there is a potential for a high ROI (return on investment) for public projects such as this because of the existing market of experienced rail riders in large urban areas along the Northeast Corridor and other urban areas.

The key for success is to incentivize the private sector in conjunction with targeted expenditures of public funds. These incentives can be created and implemented through federal legislation. USHSR has proposed and is distributing publically today the "**Private Investment in High Speed Rail Act of 2011.**" Under such legislation, private companies seeking to invest in public projects stand to gain specialized benefits as well as other concessions for investment in the construction and operation of the nation's HSR rail lines.

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<sup>3</sup> *Id.*

<sup>4</sup> Robert Wright, £2.1bn HS1 Sale Lifts Privatisation Prospects, FINANCIAL TIMES (November 10, 2010) available at <http://www.ft.com/cms/s/0/6be9c170-e90d-11df-a1b4-00144feab49a.html#axzz1BgsRnLPI>.

### III. SIGNIFICANT PROVISIONS OF THE BILL

The Bill aims to designate HSR systems as "Projects of National Significance" to justify expedited processing of requests for environmental approvals, permits, and funding. It includes incentives that will (1) create jobs through support of the "Buy America," green energy and small business initiatives, (2) revitalize our transportation infrastructure, (3) allow private investment in Amtrak through stock and bond issuances, (4) give tax credits and flexible repayment options to businesses, (5) expand RRIF and TIFIA programs, (6) advance the creation of an Infrastructure Bank as proposed by a bipartisan group of Senators lead by John Kerry, Kay Bailey Hutchison and Mark Warner, and (7) use public funds from FRA to leverage state public-private partnerships financing for HSR. The end result means less reliance on public funds, thereby expediting HSR development, design, and construction at a reduced cost. Meanwhile, the public partner (federal and state governments) retains some control and management of the overall rail program to ensure that public requirements and government standards are met.

Many states have already signed legislation that encourages public-private partnerships. Most recently Georgia and Ohio have both signed bills heralding a new wave of thinking about funding projects of this magnitude. In Georgia, its General Assembly approved a water project bill that allows construction of reservoirs by public-private partnerships. Last week, Ohio's Governor John Kasich signed a \$6.8 billion transportation budget bill which includes a public-private partnership option. He remarked that it will help the state "get more infrastructure for less." It is this growing trend that illustrates the necessity of establishing a federal program that will further assist the development HSR projects. For the reality is that due the current economic climate and record budget deficits, America cannot afford not to use all available financial resources to make our rail transportation network more competitive with other nation's around the world.

#### IV. CONCLUSION

At this time, this Committee and the entire Congress have an excellent opportunity to develop a public-private partnership model to fill a portion of the gap for HSR funding. The public-private partnership team of investors, lawyers, and public officials that successfully develops this model will likely be applauded for decades as the private sector helps develop HSR systems across America. We are confident that market forces will make the business case for HSR and this will show that additional federal funding is well placed as the foundation of our nation's infrastructure. The first test of the private market should occur this year when several states are expected to release their Requests For Qualifications (RFQs) to bidders. The RFQ's will likely contain a requirement for private investment to supplement federal and state funding. In closing, we invite members of this Committee to continue this discussion at our upcoming HSR Conference on May 23rd and 24th in Chicago. Public-private partnerships will be a key part of the agenda at the conference.

Thank you, Mr. Chairman and Madam Ranking Member for your time and your leadership. The USHSR looks forward to working with you in the future and I welcome the Committee's questions and comments.

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**Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials,  
Committee on Transportation and Infrastructure  
U.S. House of Representatives**

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Testimony of Rick Inclima, Director of Safety for the Brotherhood of Maintenance of Way Employees Division/Teamsters (BMWED), presented before the hearing held on April 7, 2011, on the topic of *"Railroad and Hazardous Materials Transportation Programs: Reforms And Improvements To Reduce Regulatory Burdens"*.

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Good morning Chairman Shuster, Ranking Member Brown, and members of the Subcommittee. My name is Rick Inclima. I am Director of Safety for the BMWED. Mr. Chairman, thank you for holding this hearing and for inviting us to present testimony on rail safety issues which affect every man, woman, and child in this great country. I will be pleased to address any questions you may have today or subsequent to this hearing.

Our 35,000 members are stakeholders who maintain the right of way on railroads throughout the United States. Our members have a vested interest in these proceedings because they work in close proximity to the hazardous and ultra-hazardous materials that are transported by rail throughout the United States. As such, they are often the first to discover or witness unintended releases of hazardous materials or respond to derailments that may involve hazardous materials. BMWED members also perform critical safety-sensitive track and infrastructure maintenance, inspection, and repair functions necessary to prevent derailments and hazmat rail emergencies.

The title of today's hearing assumes that there is a way to reduce an assumed unfair regulatory burden by making "reforms" and merely asks the rhetorical question of how to eliminate unfair regulation. The framing of the question brings to mind the old adage, 'if you ask easy questions, you should expect easy answers.' It is easy to say that the regulated community would rather not be regulated, but to conclude that regulations are unnecessary or that current railroad regulations are excessively burdensome is not borne out by the facts.

More than 5,000 American workers are killed every year in on the job accidents nationwide. In 2010, 20 railroad employees lost their lives in the line on duty, and another 4,312 employees on duty suffered reportable injuries. Last year, there were 2,009 highway grade crossing accidents where 261 persons were killed and another 828 injured. There were 839 casualties to trespassers including 450 trespasser fatalities. Additionally, there were 21 train accidents that resulted in a 37 rail cars releasing hazardous materials, requiring the evacuation of 1,752 persons. Based on our experience, we know that reducing the current levels of railroad and hazmat regulation will not improve these statistics, improve safety, or create jobs. Regulations and compliance with the innovative provisions of the Rail Safety Improvement Act of 2008 (RSIA) are

necessary to protect workers and the public.

Some things in life are a given. The swallows return to San Juan Capistrano annually on the same date. Cicadas engage in noisy rituals every seven years. And railroads complain about too much regulation. A simple Google™ search demonstrates that which is obvious: the railroads constantly complain about being regulated. These complaints started at least as early as 1914 and are repeated on a consistent basis by railroads and their associations to whomever will listen.

The truth is that passage of the Staggers Rail Act of 1980, which deregulated the industry, eliminated any factual basis to verify railroad management complaints based on economics. The carrier's complaints stem from their single-minded urge to unilaterally dictate the treatment of the public, shippers, and rail workers.

History, however, shows that railroad regulation is directly proportional to the failures of railroads to behave in ways that society demands. The most contemporary example is the recent congressional directive in the Federal rail safety law, 49 U.S.C. § 20109, to protect railroad employees who are safety whistleblowers. The need for their protection was proven by years of intimidation and abuse of rail workers, with a resultant danger extending to shippers and the general public. The necessity of statutory protection has been verified by reports from the National Transportation Safety Board ("NTSB"), the Federal Railroad Administration ("FRA"), the U.S. Government Accountability Office ("GAO"), and the DOT's Inspector-General along with a legion of court cases. These safety whistleblower protections are absolutely necessary to improve the safety culture of the industry and allow workers to raise safety issues and concerns without fear of discipline or dismissal. These critical protections must be continued and strengthened in order to further rail safety.

Despite the call to reduce/eliminate regulation, the Congress should know that the regulatory sky is not falling, that carrier complaints are largely unsupported, and that regulation has not adversely affected the industry's bottom line. Indeed, the very safety improvements the railroads routinely boast about result from, and are proportional to, the regulations implemented by FRA and Congressional statutes.

#### **The Rail Safety Advisory Committee (RSAC)**

The Rail Safety Advisory Committee was created in 1996 to develop a consensus by all interested parties for rulemakings by the Federal Railroad Administration (FRA). It has been very successful in mitigating any regulatory burdens upon the railroad industry. Rail industry stakeholders, including railroad management and railroad labor, have agreed to almost every regulation issued by FRA since RSAC was established. It must be recognized that FRA is involved with all of the interested parties at every step of the RSAC process. Therefore, the final rules which have been adopted by FRA, overwhelmingly include the consensus-based recommendations of the RSAC.

The railroad industry has benefited from the laws and regulations adopted by the FRA through the RSAC. In a publication from Association of American Railroads' (AAR) Policy and Economics Department dated June 2010, it states "2009 was the safest year ever for U.S. railroads, breaking the safety record set in 2008. From 1980 to 2009, the train accident rate fell 75 percent, the rail employee injury rate fell 82 percent, and the grade crossing collision rate fell 81 percent—setting new record lows in each category." This type of information is consistently repeated in congressional hearings by the AAR. See, e.g., Testimony of Edward R. Hamberger, President & Chief Executive Officer, Association of American Railroads, Before the House Committee on Transportation and Infrastructure, *Hearing on the Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroad's* (Oct. 25, 2007). Safety has improved over the years because of direct involvement of employees and employee representatives in the governance of the rail safety programs and the development of FRA regulations. We encourage the Subcommittee to support the RSAC process in its upcoming railroad safety deliberations.

#### **DOT-OSHA Jurisdiction**

For the safety of rail workers and the public, it is vitally important to maintain the current shared jurisdiction between the Department of Labor Occupational Safety and Health Administration (OSHA) and the Department of Transportation (DOT) over hazmat employees' protection.

Under current law, DOT and DOL share responsibility for hazmat employee safety. DOT regulations deal primarily with the requirements for the safe transportation of hazardous materials. DOT's expertise is transportation, and their regulations address such critical areas as container and tank car design, packaging, labeling, placards, shipping papers, placement in train or on vehicle, and emergency response information for hazardous commodities. Through these regulations, DOT addresses requirements for maintaining the integrity of the container and safe handling of the hazardous commodity in transit. The DOT regulatory philosophy is sound: By regulating the integrity of the hazardous materials container and the safe handling of same in transit, there is a reasonable expectation that there will be no release and no exposure. Where there is no release and no exposure, workers and the public are not at risk from the hazardous materials being transported.

However, despite best efforts to protect the integrity of hazardous materials containers in transit, accidents do happen and containers do release their contents. As evidenced above, 37 railcars released hazardous materials in 21 separate rail accidents in 2010. Once a hazmat container is breached or otherwise releases its contents, the DOT has no regulations or expertise in how to actually protect rail workers or emergency responders. This is where DOT jurisdiction gives way to the worker protections of DOL/OSHA.

DOL/OSHA has both the expertise and the comprehensive regulations necessary to protect rail workers and emergency responders from the safety and health risks associated with unintended releases of hazardous materials. OSHA regulations address the initiation

of the emergency response sequence and have requirements for personal protective equipment such as respiratory protection, chemical protective clothing, eye protection, hearing protection, monitoring of fire and explosion hazards, medical surveillance, hazard communication, evacuation, emergency response plans, incident command, etc.

This is the interplay of the complementary jurisdiction between DOL/OSHA and DOT. One complements the other. DOT regulations are written to prevent, to the extent humanly possible, the hazardous material from escaping the container. Thankfully, more than 99.9% of the time, the regulations serve their intended purpose and the commodity reaches its destination by rail safely and without incident. This is a tribute to both an appropriate level of regulatory oversight by DOT and the skills and dedication of the industry's professional workforce. But once a release occurs, it is the DOL/OSHA regulations, which are written to protect the lives and health of workers, which must continue to govern.

The issue of shared jurisdiction has long been established between FRA and OSHA. On July 15, 1976, the FRA published a notice of proposed rulemaking (41 FR 29153) concerning the issuance of railroad occupational safety and health standards under the authority of the Federal Railroad Safety Act of 1970 (84 Stat. 971; 45 U.S.C. 421 et seq). After reviewing the comments submitted to the docket, and upon reconsideration of the proper role for FRA in the general area of occupational safety and health, FRA determined that the proposed standard should not be issued. As a result, FRA withdrew its notice of proposed rulemaking with respect to railroad occupational safety and health standards. "FRA had determined that it should not attempt to regulate at this time in an area already covered by regulations issued by the Department of Labor (Labor). The March 14, 1998, termination notice explained the respective jurisdiction of FRA and DOL/OSHA in a policy statement. That policy statement continues to guide the shared jurisdictional authority between FRA and OSHA, a policy which has served the safety need of the railroad industry and its employees for over 30+ years. See *Federal Register*, Vol. 43, No. 50 – Tuesday, March 14, 1978.

It is crucial that all hazmat employees be protected with the most effective health and safety standards and training possible. To simply eliminate the role of OSHA in this vital area would have a severe adverse affect on transportation workers and emergency responders. This in turn increases the risk to workers and the public. The existing law and current complementary jurisdiction between DOT and DOL should not be changed. The status quo works very well. There is no overlap and there is no duplicity of regulation. DOT does what it knows best, and DOL does what it knows best. It would be an ironic mockery of regulatory reform to eliminate or curtail the role of OSHA in safeguarding worker safety and health by forcing DOT to expend considerable sums of taxpayer dollars to hire and train personnel, develop requisite skills and expertise, and promulgate rules to fill the resultant regulatory void.

#### **DOT Hazmat Instruction Training Grants**

The National Labor College (NLC) in Silver Spring, MD has been providing rail workers

with comprehensive quality hazardous materials training for 20 years. Since its inception, the Rail Workers Hazardous Materials Training Program has provided hazmat training to approximately 28,000 rail workers from 49 states and the District of Columbia. This program continues to be funded by non-DOT government grants and private grant sources.

To further the vital work of this nationally recognized program, in 2008, the DOT awarded the NLC a Hazardous Materials Instructor Training (HMIT) grant to train hazmat instructors. Under this competitive grant award, 221 DOT HMIT regional trainers received instructor training, with 44 receiving advanced training under the DOT HMIT Advanced Trainer Program. In turn, these regional trainers delivered quality hazardous materials training to 2,643 rail workers back at their home terminals and local work locations.

The goal of the DOT HMIT program is to develop and sustain a model training program for all rail workers involved in the transportation of hazardous materials by:

- Building a cadre of skilled peer trainers to deliver hazardous materials training, to become safety and health activists, and to serve as worksite resources;
- Providing rail workers with the skills and knowledge necessary to protect themselves, the community, and the environment and by minimizing the risk that hazardous substances will be inadvertently released into the air, water, or soil during rail transportation;
- Employing a variety of training delivery methods to increase access to training beyond the traditional classroom to rail workers unable to participate in onsite training; and,
- Providing outreach to traditionally underserved populations (Native American, Hispanic) of rail workers.

The trainers developed through the DOT HMIT program have been instrumental in delivering quality training to rail workers at their home terminals and work locations. Eighty-four percent of the Advanced Trainer Program trainees reported delivering training to their peers, 42 percent reported training delivery to mixed groups of front-line rail workers and railroad management, and some trainees have also delivered hazmat awareness training in their communities to firefighters, EMT's, and members of the general public. Rail program staff and experienced peer trainers/mentors are available to assist in coordinating training efforts of the regional peer trainers, provide instructional materials, resource information and materials, and to assist in providing joint instruction.

The DOT HMIT grant program is not funded through federal tax dollars and does not add to the federal deficit. The program is funded by hazmat registration fees collected under the DOT Hazardous Materials Regulations from covered entities who offer or transport hazardous materials. We implore the Subcommittee to continue its support for this highly successful and nationally recognized worker training program for the safety of the industry, its workers and the American public.

### Hazardous Materials Regulations

Comprehensive hazardous materials regulations are necessary to protect the public. You might think that the railroads would disagree on the grounds that railroads carry hazardous materials safely and therefore less regulation is justified. Think again.

The railroads under oath have stated to regulators that these cargoes are too dangerous for them to carry safely given their cost/benefit analysis. Let me quote from a case known as *In Re Classification Ratings On Chemicals, Conrail*, 3 I.C.C. 2d 331 (Dec. 19, 1986).

“Following the chemical disaster in Bhopal, India in 1984, Conrail and Union Pacific Railroad Company initiated several programs to review transportation regulations and operating procedures for these commodities. They contracted with an independent consulting firm Karch & Associates, Inc. specializing in toxicology and risk assessment, to prepare a list of ultra-hazardous materials....” “Conrail contends that a catastrophic occurrence from transporting these commodities would economically cripple the carrier and thus affect its ability to provide common carrier service. It submits that its risk factors are compounded because it operates through one of the most populated areas in the country. Given these facts, Conrail argues that it has a duty to take all reasonable precautions to protect the public interest and its own corporate and financial integrity. It contends that the Supplement 20 flag out (a refusal to carry these cargoes) is such a reasonable precaution.”

Perhaps you are thinking, ‘well, that was 25 years ago, things are different now.’ Think again.

The Union Pacific Railroad petitioned the STB for relief from its common carrier obligation to carry long distance chlorine, not even one of the 400 ultra-hazardous cargoes of the Karch study, on the grounds of the lack of a cost/benefit given the safety hazards under the current regulatory structures. See, Finance Docket No. 35219-STB-2009-0035. The Union Pacific admitted that “... the risk of potential exposure from long distance shipments of chlorine is unnecessary ....”

The solutions proposed by the railroads are that either they be allowed not to carry such cargoes or they want a Price-Anderson law passed so that they are not financially responsible for the damages arising from such accidents. The railroads themselves have never advocated that less regulation is the solution for these problems. The concept of less regulation arises purely from the idea that the cost of complying with regulation is less important than increasing profits, and that the risk of death, injury, and property damage should be borne by the workers, worker’s families, shippers, and the public --- anyone other than the shareholders of the railroads.

A rollback of hazardous materials regulation and/or FRA safety regulation will dramatically increase the risk from rail transportation of these inherently hazardous

materials. Unilateral elimination of current regulations for the purpose of reducing regulatory burden will result in avoidable catastrophes.

#### **Dark Territory**

About 40% of all mainline Class I carrier track is dark territory, areas where there are no electronic signals to control the location, speed, and direction of trains, monitor the integrity of the rail, or verify the position of switches. In dark territory a misaligned switch virtually guarantees a rail accident and only luck determines the scope of the resultant disaster. Dark territory also aggravates the 'single key problem.' Most railroad mainline switches can be opened by the same switch key. When a switch is opened or misaligned in dark territory, there are no electronic means for detection. Railroad switch keys can be purchased on the internet for less than \$1.00 and are in wide circulation among ex-employees and rail hobbyists. Even counterfeit keys open the switches. As a result, persons with malicious intent can unlock a switch in dark territory without detection, causing mayhem, death, and destruction. This is a guaranteed path to lethal accidents, a prediction that the BMWED and others including the NTSB have made for years, so rolling back statutes requiring switch monitoring technology is clearly not in the public interest. The deaths at Graniteville, S.C. proved this point all too graphically.

#### **High Speed Rail, Intercity Passenger Rail and Expansion of Commuter Rail**

##### **A. INTERCITY PASSENGER RAIL SERVICE MUST BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

The expansion of Inter-City Passenger Rail and development of High Speed Passenger Rail, as provided for and encouraged in the Passenger Rail Investment and Improvement Act of 2008, was a long time coming and we were pleased that the last Congress and the Administration recognized that rail is an under-utilized resource that can be used to provide safe, efficient, effective and environmentally sound passenger transportation. But, it is important to recognize that safe and effective passenger rail transportation depends on highly skilled, professional railroad workers, many of whom are federally certified to perform various forms of railroad work.

Railroad work involves unique skills and training and sometimes special certifications. Consequently railroad work on the major freight railroads, Amtrak and the major commuter lines is performed by railroad workers in the traditional crafts recognized by the NMB. Professional railroad employees have a proven record of accomplishment of successful work on joint-owned commuter rail systems. Furthermore, professional railroad employees were responsible for the operating, dispatching, construction, rehabilitation and upgrading of freight lines used in commuter passenger service throughout the United States and especially in the Northeast. Railroad workers operate and maintain the major commuter rail systems -MBTA, MetroNorth, LIRR, NJ Transit, SEPTA, METRA.

For the same reasons, work on new High Speed Rail operations and expanded Inter City Passenger Rail operations should be done by railroad workers. Certainly the persons who do work for the highest speed passenger operations (whether train movements and control, track and signal work, equipment work or administrative work) should be no less skilled and no less qualified than the persons who do such work involved with the movement of commodities. The ability of entities that do work connected to High Speed Rail operations to hire qualified employees to perform that work will depend on those entities being rail carriers because rail workers will not accept jobs with entities that are not rail carriers since railroad workers who leave carrier employment lose substantial, vested Railroad Retirement benefits, and the rights and protections provided under other Federal Railroad laws.

There are some who want to enter the railroad industry and to perform work on railroad lines, but who seek their own economic advantage by attempting to perform railroad work without being "rail carriers" under the Federal railroad laws and by using workers who do not have the rights and benefits mandated by the Federal railroad laws. This race to the bottom must be resisted.

While certain small commuter railroads have engaged in the "unbundling" of railroad work among multiple contractors who are not rail carriers, this unfortunate practice is not followed on any of the major freight railroads, major commuter railroads or Amtrak. All of those entities recognize that integrated railroad operations in a single carrier operator employing railroad workers to perform traditional railroad work is the safest and most effective and efficient method of railroad operations. That same approach should be used for High Speed Rail and expanded Inter City Passenger Rail operations; the unbundled model should be rejected. Multiple non-rail carrier entities simply cannot provide the most skilled and fully certified rail workers. Additionally, safety is compromised in such a model. When one entity is responsible for overall operations it has a much greater incentive to operate as safely as possible and to get quickly to the cause of an accident when one occurs in order to prevent a recurrence. When multiple entities are involved in separate aspects of rail operations, there are incentives for each of them to focus only on its own responsibilities and to rely on someone else to do what is necessary in overlapping areas. And when there is an accident it is likely that the contractors responsible for train movements, the signal system, the track and the maintenance of the equipment will blame each other. That incentive is eliminated when one entity is responsible for the entire operation.

As the Federal government encourages and helps fund the promotion of High Speed Rail and expansion of Inter City Passenger rail transportation, it should make sure that it is providing real rail transportation that employs real rail workers, not "knock-off" rail transportation that utilizes imitation rail workers. To the extent that Amtrak is used to provide new service, such service will be real rail service using real rail workers; but whoever provides the new service must be rail carriers who employ workers covered by the Federal railroad laws. Talk of "privatizing" the Northeast Corridor or Intercity Passenger rail service ignores recent history. The current private freight railroads once provided passenger service too. Freight and passenger service were not separated,



passenger service was part of the common carrier obligation. However, the freight railroads were dramatically losing money on the passenger service and could not continue to provide that service. Amtrak was created because the private sector could not provide passenger rail service; the freights were relieved of their common carrier obligations for passenger service in return for allowing Amtrak to operate on their lines.

The PRIIA requires that Federal High Speed Rail and Intercity Passenger Rail grants must be conditioned on requirements that operators on federally improved rail infrastructure will be rail carriers under the Interstate Commerce Act and all statutes that adopt that definition of rail carrier, including the Railway Labor Act, Railroad Retirement Act and Railroad Unemployment Insurance Act. A rail line, the right of way, the signal system and the shops necessary for maintenance of locomotives and rail cars are all components of rail infrastructure and work on and for those components must be performed by railroad workers. The PRIIA also provides that collective bargaining agreements applicable on a railroad whose right of way is being used will remain in full force and effect; and that the rights, privileges and benefits of railroad workers be preserved. This is a mandate that the employees who perform work related to High Speed Rail and Intercity Passenger Rail supported by Federal funds must be railroad workers covered by the RLA, RRRA, RUIA and FELA. This mandate must be continued.

**B. RAILROAD WORK, INCLUDING OPERATIONS AND INFRASTRUCTURE IMPROVEMENTS ON EXISTING RAILROAD LINES AND SIGNAL SYSTEMS AND OTHER FACILITIES MUST BE PERFORMED CONSISTENT WITH EXISTING COLLECTIVE BARGAINING AGREEMENTS**

Virtually all of the work and operations envisioned by various plans to expand intercity passenger rail work and for high speed rail service will be done on track, structures and/or rights-of-way, using signal systems and other facilities and structures of existing rail carriers—either freight railroads or Amtrak. Those carriers, and the track, rights of way, signal systems, facilities and structures they own, are covered by collective bargaining agreements between the carriers and the various rail unions that provide covered employees with rights to perform work within the scope of those agreements, and that may regulate the use of contractors to perform such work. Congress and the Administration should ensure that long standing rail collective bargaining agreements are protected and that those who seek their own profit will not be able to do so by undercutting or undermining those agreements. Indeed, these are binding contracts between the railroads and rail unions that have been in effect for decades and they are entitled to due respect as intercity passenger rail service and high speed rail service is expanded. The freight railroads and Amtrak are statutorily obligated to comply with their agreements with the rail unions; federal funds should not be allowed to be used to facilitate evasion of those agreements and federal programs should not encourage others to negate or undermine those agreements.

**C. BUY AMERICAN REQUIREMENTS SHOULD BE CONTINUED**

The PRIIA states that DOT may not approve a grant for a High Speed Rail or Inter City

Passenger Rail project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” This is an important requirement and a basic premise of federal funding for rail projects: to create jobs for Americans. Strong Buy American requirements are essential to development of High Speed Rail and expansion of Inter City Passenger Rail.

**D. WHEN STATES, STATE AGENCIES AND OTHER STATE ENTITIES ACQUIRE RAILROAD LINES THAT WILL STILL BE USED FOR INTERSTATE RAIL TRANSPORTATION THOSE ACQUISITIONS SHOULD BE GOVERNED BY THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT AND ALL WORK ON AND FOR THOSE LINES SHOULD BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

The Interstate Commerce Commission Termination Act gives the Surface Transportation Board jurisdiction over transportation between states and within states “as part of the interstate rail network,” by rail carriers, and over their “routes, services and facilities.” 49 U.S.C. §10501 (a)(2) and (b)(1). The STB’s jurisdiction includes “the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State.” 49 U.S.C. §10501(b)(2). Its jurisdiction “is exclusive” and the remedies the ICA provide “with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. §10501(b). While the ICA now exempts provision of mass transportation service by local government authorities and their contractors from STB regulation, it does not exempt non-mass transportation activities from STB regulation, and certainly does not exempt state and local governments from STB jurisdiction over acquisitions of portions of the interstate rail system. Additionally the ICCTA expressly states (49 U.S.C. §10501(c)(3)) that the other railroad laws that use the ICA definitions still apply to local governments; so even with respect to mass transportation activities, a local government authority or its contractor is subject to the federal railroad laws applicable to railroad workers such as the RLA, FELA and Railroad Retirement.

The ICCTA expressly provides that a person that is not already a carrier may not construct or acquire a railroad line without STB approval (49 U.S.C. §10901(a)), and a rail carrier may abandon a rail line or discontinue service on a line only with STB approval. 49 U.S.C. §10903(a)(1). The Act defines “Railroad” as including the road used by a rail carrier as well as track, roadbed, bridges, switches, and spurs used or necessary for transportation; and “transportation” includes locomotives, cars and equipment “related to movement of passengers or property or both by rail”, as well as services related to that movement. Section 10102(6) and (9). Since “railroad” is defined as all of the physical assets that constitute a railroad, and since a railroad line is simply a portion of a railroad; if “railroad” is defined as including track, switches, spurs, and roadbed, a “railroad line” is necessarily comprised of track, switches, spurs, and roadbed. Accordingly, when any person (including a State entity) acquires a railroad line that is part of the interstate rail system that will continue to be used for interstate rail transportation, that acquisition may be accomplished only after STB approval under

Section 10901, or pursuant to STB exemption from such approval (where the STB still has jurisdiction over the line and the transaction). Under Board rules, a State entity that acquires a railroad line and assumes responsibility for the line is a carrier, unless it contracts with a carrier or carriers for it or them to perform all railroad responsibilities. While Section 10502 of the Act allows the STB to exempt a transaction from prior Board approval (subject to a petition to revoke the exemption), the transaction and the acquiring entity are still subject to Board jurisdiction.

Despite the language of Section 10901, in recent years the STB has allowed acquisitions of railroad lines to go forward without Board approval or exemption under Section 10901. In these transactions states and other public authorities buy active rail lines from freight railroads but the freight railroads retain permanent, exclusive “operating easements” for freight operations on the lines. So these lines are still used by the freight railroads for interstate freight transportation, but the public entities begin commuter rail operations as intra-state operations with non-rail carrier operators, and non-rail carrier companies doing locomotive and equipment maintenance, dispatching and maintenance of the line and its signal systems, even though the line is still being used by the freight railroad (and sometimes Amtrak) for interstate rail transportation. Typically, the public entity brings in an independent contractor or contractors to perform the railroad work. In these arrangements, the operator and/or other contractors used to maintain the line and signal system used by the commuter operator and the freight railroad, and to maintain the commuter rail trains, are not carriers and their employees are not railroad employees; they are not covered by RLA, FELA or Railroad Retirement.

Under ICCTA, STB has no jurisdiction over a public entity owning/operating an intra-state line used only for intrastate transportation. But the STB has jurisdiction over transfer of a portion of a railroad that is within one state by is still used for interstate traffic. Section 10901. The STB has devised a process to negate its own jurisdiction and authority over pieces of the interstate rail system used for interstate rail transportation. Under this process, application for the transfer of the line is filed with STB under Section 10901, but dismissal is sought on the basis that there is no real transaction since the selling freight carrier retains an “operating easement” for continued freight service over the line. STB then dismisses the application based on its decision in *State of Maine* 8 I.C.C.2d 835, 1991 WL 84430 (I.C.C.) and subsequent cases. A railroad line is then acquired by the State without STB approval or exemption, and the Board cannot regulate the State’s use or maintenance of the line or its future disposition of the line. Additionally, public entities use Federal Transit Act funds to acquire and/or modify and upgrade the lines for commuter passenger operations, but freight employees are not covered by “13(c)” protections so the employees affected by the transfers have no protection at all, even though Federal funds are used to acquire and/or substantially upgrade the lines.

The *State of Maine* line of cases is based on the made-up standard that States and State entities that acquire the physical assets of railroad lines are not actually acquiring railroad lines because they are not acquiring the freight service operating rights. There is no statutory support for this. States that acquire rail lines that are part of the interstate rail

system and will continue to be used for interstate rail service require STB authorization or exemption for the acquisitions under Section 10901. This line of cases is predicated on a definition of "railroad line" that is at odds with the ICCTA. Since Railroad is defined in the Act as the physical assets of a railroad, and a "railroad line" is a portion of a railroad, it is contrary to the Act for someone to acquire the physical assets of "railroad line" without STB approval or exemption on the premise that there has been no acquisition of a railroad line, just acquisition of the physical assets of the railroad line.

These sorts of transactions are not only contrary to the Act, they raise a number of problems for the interstate rail system, for railroad workers and for safe and effective rail operations, such as:

1. What responsibility will the public owner have for line? What regulation and oversight will apply to the line? Who will the commuter rail operator be? Will it be a railroad? Will its employees be covered by railroad statutes?
2. What happens to employees? What rights do they have? They would want to follow their work, but there is no mechanism for them to do so. Also if the work goes to non-rail contractors then employees won't want to go because they will lose railroad retirement rights by severing their "present connection" with the industry. The employees will not have "13(c)" rights even if federal transit money is used because the DOT takes the position that freight workers are not transit workers so if they are affected by a line conveyance accomplished with transit money, the freight workers will not be protected.
3. Contractors cannot hire qualified, professional, licensed/certified railroad employees. Safety suffers because the line is not operated by skilled, professional railroad workers.
4. Other safety issues-Freight, Amtrak and commuter trains will run on same line, but who is ultimately responsible for the line? What happens in the event of an incident or other safety problem -- who is responsible and who has incentive to improve safety? The line is part of interstate operations, but ownership of line is not with a rail carrier and federal railroad statutes are not applicable. When a single carrier operator is responsible for train movements; maintenance of the track, right of way and signal system, and maintenance of the locomotives and rail carriers, it has a powerful incentive to maintain safe, efficient and quality operations because all responsibility ultimately runs to that carrier. But under the model where there is one contractor for train movements, another for maintenance of way, one for signal work, another for maintenance of locomotives and cars, one for railroad clerical work, and another for dispatching, there are real incentives for each to minimize its responsibility and leave concerns to the other contractors. In the event of an accident, one can easily imagine the operator whose engineer was driving the train blaming the signal contractor, or the maintenance of equipment operator who inspected the air brakes; or one or more of them blaming the maintenance of way contractor for poor track maintenance, or all of them might

pointing their fingers at each other. Instead of determining what went wrong to prevent a recurrence, there will be a blame-game and years of litigation.

5. What is the long term impact on Railroad Retirement system? As employees are pulled out of the system, as "railroads" are being run without railroad workers, there will be lesser contributions to the RR Retirement fund.

6. Federal monies are being used to deprive railroad employees of rights and benefits.

7. Balkanization of the rail system: After World War I, the ICA was amended and the ICC was given more powers because the war made it apparent that the country had a patchwork rail system; existing patterns of ownership, connections and responsibility were not conducive to an effective and efficient national system. When entities that own right of way and trackage in the middle of the interstate rail system are not carriers, when the STB has no authority over the entities that own track used in heavy interstate freight and intercity passenger movements, when a state agency that owns a line of railroad could walk away from the line with the STB powerless to act, there is danger to our rail system. Our rails system suffers when rail lines cease to be owned by responsible carriers subject to STB oversight and regulation, and where interstate passenger rail operations become a mere hodgepodge of unrelated entities who do not care about a unified whole.

However, the STB has reaffirmed the reasoning of *State of Maine* line of cases noting that the rule is of longstanding (over 60 decisions-all of which were *ex parte*, none of which actually adjudicated the issue of STB jurisdiction), and because the policy expressed in those cases was deemed to encourage development of commuter rail systems (without regard for the many problems with this approach just outlined). Regardless of whether the Board's reasoning is good policy, it is contrary to the language of the Act. However, the Court of Appeals for the D.C. Circuit recently affirmed the Board's approach, concluding that "railroad line" is not defined in the Act (though "railroad" is), that there was substantial body of Board decisions applying this approach (albeit *ex parte* decisions) and the Board is due deference in its interpretation of the statute. These decisions make it all the more necessary that legislation be enacted to ensure that the STB will continue to have jurisdiction over lines of railroad that are used for interstate rail transportation, that such lines are not conveyed without STB approval or exemption from approval under Section 10901, and that the railroad work on such railroad lines will be performed by rail carriers using railroad workers covered by the Federal railroad laws.

#### **Risk Reduction Programs**

The railroads have complained about the Risk Reduction Program ("RRP") regulations not yet written but required by Congress through its mandates of the RSIA. The complaint itself reflects an endemic lack of interest by the carriers in employee

participation in rail safety matters. The entire point of the Risk Reduction Program was to approach rail safety by trying to reach another historic non-regulatory driven approach such as exemplified by the Railway Labor Act ("RLA"). The real meaning of the carriers' complaint is that it considers there to be an inadequate cost benefit to prevent horrendous loss of life and property in otherwise preventable accidents. The carriers make no pretense about preferring a safety system whose central theory is that oppressive discipline can be used to deter accidents that modern engineering and cognitive/behavioral psychological systems surely can avoid. To improve rail safety, Congress must insist on genuine risk reduction through joint labor/management cooperation with minimal government involvement such as that contemplated in Section 103 of the Rail Safety Improvement Act of 2008.

### Crane Safety

OSHA recently published extensive revisions to the 29 CFR 1926 Construction Crane Standards. The Final Rule exempted on-track cranes from certain provisions of the construction crane rule, but not all. Additionally, cranes and hoisting equipment operating alongside the railroad right-of-way conducting maintenance of way (MW) work were not exempted from any provisions of the 1926 construction crane standards at all. Both BMWED and AAR are in agreement that traditional MW work utilizing cranes and other hoisting equipment is not construction work such as that contemplated by 29 CFR 1926. The OSHA General Industry crane regulations at 29 CFR 1910.180 have applied to cranes and other hoisting equipment conducting MW work for many years, and the FRA has acknowledged this fact in the preamble to the FRA final rule published July 28, 2003, on roadway maintenance machines (49, CFR 214, Subpart D).

Compounding this regulatory overlap problem between OSHA General Industry Standards and OSHA Construction Standards with regard to cranes and hoisting equipment performing traditional MW work is that 22 states have their own OSHA State Plans. So even if Federal OSHA affirms that traditional MW track maintenance work is not construction covered by the provision of 1926, but rather covered by the General Industry Crane Standard 1910.180, the rail industry and its workers will still have 22 states that have authority to make contrary decisions under their own OSHA state plans.

The 1926 crane operation and operator certification and licensing standards are very costly and burdensome for the railroads and BMWED members, and would require the railroads to train and certify railroad MW crane operators to qualify on cranes that they would never operate.

This is an area where both BMWED and the carriers seem to be in agreement with regard to excessive regulatory burden. BMWED believes this is a matter that can and should be addressed in the RSAC process and which has a high likelihood of success.

**Conclusion:**

Railroad regulatory review has been constant and effective through the RSAC process. RSAC is the consummate public/private partnership, which each party responsible for the costs associated with their participation in the process. Any carrier complaint of burdensome or ineffective regulation can and should continue to be forwarded to the FRA and assigned to RSAC for review and consideration by the appropriate combination of subject matter experts from railroads, labor and government. There is no reason to believe that this process will be any less effective in the future, particularly in light of the Risk Reduction Program mandated by Congress and other areas of progress.

The DOT, through the FRA and the RSAC, has made every effort not to unduly burden operating railroads through excessive regulation. If the FRA has erred in this regard, it has consistently been on the side of under-regulating. The RSIA was a Congressional declaration of that fact. Railroads may complain about being over-regulated, but the facts belie that complaint. FRA regulations are sufficiently flexible, are subject to frequent and comprehensive review through the RSAC, and contain liberal waiver provisions that render carrier complaints about over-regulation largely moot.

**TESTIMONY**

**OF**

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**BEFORE THE**

**HOUSE SUBCOMMITTEE ON RAILROADS, PIPELINES AND  
HAZARDOUS MATERIALS**

**OF THE**

**COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE**

**THURSDAY, APRIL 7, 2011  
9:00 A.M.  
2167 RAYBURN HOUSE OFFICE BUILDING**



Good morning, Mr. Chairman, Ranking Member Brown, and Members of the Subcommittee. I am Joe McHugh, Vice President of Government Affairs and Corporate Communications at Amtrak. It is a pleasure to appear before you today to discuss Amtrak's legislative priorities for reforming and improving federal rail programs. The majority of these priorities were discussed in our FY 2012 "General and Legislative Annual Report," which we submitted to the Committee in February. Given the many benefits associated with the use of intercity passenger rail – from lower energy consumption and emissions reduction to safety improvements and economic growth – the development of intercity passenger rail and Amtrak's national system should be afforded a significant role in the nation's federal surface transportation programs. If our nation's intercity passenger rail system – and the transportation system of the United States as a whole – is to be developed and sustained, it is imperative that Amtrak and other federal rail programs be integrated into a comprehensive and truly multi-modal surface transportation authorization bill.

### **Background**

Demand for passenger rail service is growing. We've just finished our seventeenth consecutive month of ridership growth, continuing a long-term trend in which Amtrak ridership has increased by more than 36 percent since 2000, and we're on track for another record year. It's a trend we expect to continue, particularly with gasoline prices rising and congestion on other modes approaching pre-recession levels.

This growth is occurring in spite of a national transportation policy framework that has historically treated intercity passenger rail as a separate and secondary component of our transportation network. While other modes benefit from the certainty and stability that come with dedicated, multi-year funding streams, intercity passenger rail funding is unknown from one year to the next; at times it's even uncertain from week to week. Even in the unusual instances where capital investment in intercity passenger rail has spiked, the opportunities were unpredictable and not sustained. It is extremely difficult to replace worn out capital assets, let alone improve and expand them, under these conditions.

The recent investments in high-speed and conventional intercity passenger rail funded by the American Recovery and Reinvestment Act of 2009 (ARRA) and the FY 2010 Consolidated Appropriations Act have begun to level the playing field, but there's still a long way to go. The surface transportation reauthorization bill must now capitalize on this recent momentum by seeking to further expand the use of intercity passenger rail and its contribution to sustainable mobility and the economic strength of the nation.

The Administration's FY 2010 budget, which proposes to integrate intercity passenger rail into the surface transportation authorization programs for the first time, is a significant step. It would provide \$53 billion over six years, supported by mandatory contract authority from a Rail Account of a new Transportation Trust Fund, to both modernize the existing system and continue construction of a national high-speed rail network. This proposal would provide the type of funding stability and certainty that has long benefited other modes and helped America build the world's preeminent highway and aviation systems.

The Administration's proposal also consolidates traditional grant programs for Amtrak and HSIPR into one comprehensive rail investment program, broken down by functional categories and specific areas of need. This provides a frame for understanding the various dimensions of the national intercity passenger rail system and its investment requirements.

As America's intercity passenger railroad and its only current operator of high-speed service, Amtrak believes that the rail title of the surface transportation bill must build on this proposal, and at minimum:

1. Provide a dedicated and multi-year capital funding stream for high-speed and intercity passenger development;
2. Establish a national investment strategy to guide the planning and execution of projects;
3. Clearly define a leading role for Amtrak within that strategy that leverages its unique assets;
4. Ensure a sufficient level of coordination between the various stakeholders in high-speed and intercity passenger rail systems; and
5. Close gaps in liability and insurance requirements.

Before getting into details on the rail title, however, I'd like to address Amtrak's views on the broader reauthorization of surface transportation policy and programs.

#### **Amtrak's Views on Surface Transportation Reauthorization**

Amtrak supports the transformation of the nation's federal surface transportation policies and programs to a new, performance-based system aimed at achieving clear and measurable national objectives, including the development and expansion of our national intercity passenger rail network. Amtrak believes that within this new system, federal surface transportation investment and policy decisions should generally be made in mode-neutral or cross-modal contexts that align federal support and investment with the achievement of key national goals and the provision of safe, convenient and affordable travel options for every American community and population demographic. These reforms would result in a systems-level approach that moves beyond the traditional modal framework to identify the needs of a holistic national transportation system and create true choices for its users.

#### *National Surface Transportation Policy*

A new, transformative surface transportation system capable of meeting the needs of 21<sup>st</sup> Century America can only be realized if the federal government articulates clear national surface transportation policies and objectives, such as improving economic competitiveness; ensuring safety, security, and the public health; increasing mobility, accessibility and connectivity; achieving energy independence and climate security; providing equitable transportation options;

and fostering the development of interconnected, sustainable communities. With these objectives in place, a national policy should set forth specific goals necessary to achieve progress towards key objectives and measure program performance against such goals. One specific goal Amtrak strongly supports, which could apply to a number of broad objectives, is to link all pairs of metropolitan areas with populations of 1 million or more and separated by less than 600 miles with frequent, reliable and high-speed intercity passenger rail service. Other goals could articulate benchmarks for reducing surface transportation fatalities, cutting carbon emissions, minimizing delays, expanding intercity passenger rail ridership, or increasing the percentage of surface transportation assets in a state of good repair. Additionally, a national surface transportation plan should be designed and executed in order to support the newly established national surface transportation policy, objectives and goals. This plan should incorporate separate modal planning efforts already underway, such as the Federal Railroad Administration's National Rail Plan.

#### *Performance-Based Funding*

Federal transportation funding should be invested to support the transportation policies, objectives and goals established at the national level. The federal government should establish performance criteria to guide state and local transportation agency decisions towards achieving national objectives and goals, and reward state and metropolitan transportation plans that can be reasonably expected to achieve favorable outcomes. Funding could be apportioned to execute qualified state and local plans on a cost-to-complete basis.

#### *Comprehensive and Robust Planning*

The federal government should review, update and reissue all relevant surface transportation planning requirements to ensure consistency between the national policy, objectives and goals and the criteria that state and local officials use to create their transportation plans. Federal planning requirements should promote comprehensive street designs and foster the integration of transportation and land use planning to encourage development and affordable housing near intercity passenger rail stations. Emissions reductions goals should also be integrated into the transportation planning process to help mitigate the transportation sector's contribution to global climate change. Consistent with the Passenger Rail Investment and Improvement Act of 2008, state rail plans should be coordinated with the statewide transportation planning process and set forth rail transportation's role within state transportation systems. Finally, the planning process should consider all modes and management approaches using analyses that account for the full costs and benefits of investment decisions.

To support this effort, the federal government must invest in robust new data collection and modeling techniques to help inform the planning process and evaluate investment decisions across modes. Additionally, the U.S. Department of Transportation (DOT) should include an appraisal of the intercity passenger railroad system in its biennial report to Congress on the condition, performance and capital investment requirements of the nation's highway and transit systems.

### *Mode-Neutral Programs*

Amtrak supports the establishment of broad modal eligibility across surface transportation programs so that investment decisions can be responsive to policy goals. To support that aim, federal surface transportation programs should transition to integrated, mode-neutral programs characterized by functional purpose rather than by types of vehicles and infrastructure. The new paradigm should ensure that all facets of travel are covered – rural, urban, intercity, interregional and international. It should also account for the various investment needs across modes, such as those related to safety, environmental stewardship, state of good repair, capacity expansion, intermodal connectivity, rural connectivity, metropolitan mobility, demographic accessibility and research. This will allow states, regions and localities to develop solutions to meet national performance goals while maintaining maximum flexibility to accommodate unique individual circumstances and preferences. In the event that a metropolitan mobility program is established, Amtrak supports the concept of “corridor mobility” approaches that would allow two or more metropolitan areas to cooperatively address regional and mega-regional mobility needs, including through strategies to improve corridor mobility and connectivity through new or improved intercity passenger rail service.

### *Project Delivery*

Amtrak supports modifications in the environmental review process that would reduce federal and state funding requirements, eliminate redundancies, and improve efficiency and timeliness of project delivery without adversely affecting the quality or integrity of the process. For example, project sponsors should not be required to duplicate work in the environmental review phase of project delivery that was already conducted in the planning phase. The review process under the National Environmental Policy Act (NEPA) should focus on studying environmental impacts of the preferred alternative and not duplicate the alternatives analysis conducted at the planning stage, provided that the planning analysis meets standards to ensure the adequate consideration of alternatives and public participation. Additionally, federal sponsor agencies involved in the environmental review process need to be appropriately staffed to respond to environmental documentation needs in a thorough yet timely manner. This is particularly the case with the Federal Railroad Administration, which must now manage a major capital investment program in addition to its traditional safety responsibilities. Consideration should be given to establishing a unified environmental review group within DOT that could provide consistent technical support to the oversight and management of the NEPA process by its component agencies.

### **Amtrak’s Views on a Dedicated High-Speed/Intercity Passenger Rail Program**

While we endorse the concept of a generally mode-neutral, performance-based approach to surface transportation policy, the nascent condition of funding opportunities for intercity passenger rail will require that it be given special consideration before it can be expected to compete in a truly mode-neutral environment. Amtrak therefore supports the position of the National Surface Transportation Policy and Revenue Study Commission, which recognized the need for a program dedicated solely to intercity passenger rail investment amongst a broader set of functionally-based, multi-modal programs of federal interest, several of which intercity passenger rail would play a role in.

A capital investment program dedicated to intercity passenger rail is justified by the need to not only accommodate the existing system, but also to facilitate the expansion of high-speed and intercity passenger rail services and build up the planning, technical and institutional capacity currently lacking from decades of underinvestment.

*The Limitations of PRIIA and HSIPR*

The HSIPR program, authorized by PRIIA and set into motion by ARRA, represents a significant shift in national transportation policy. As with any new program, however, there are important lessons to be learned from its initial implementation, and adjusting the program in response to these lessons will be critical to ensuring its long-term success. In thinking about the structure of a dedicated rail component of the surface transportation bill, we must first reflect on the limitations of the current program.

To begin with, the program lacks stability because it relies on the uncertain annual appropriations process. As previously discussed, this uncertainty is a major hindrance to effectively planning and executing the type of major, complex projects targeted by this program. Furthermore, the program's statutory construct is not aligned with the magnitude and scope of the effort the FRA and the HSIPR stakeholder community currently face. PRIIA gave states the primary responsibility for planning and developing intercity passenger rail corridors, thus broadening the pool of stakeholders vested in a system that was traditionally the responsibility of the federal government and Amtrak. This framework works well for preserving and improving the existing network, as well as incrementally developing new and improved corridors. It has limitations, however, as a vehicle to efficiently process the \$10.5 billion appropriated for HSIPR in 2009 alone – PRIIA authorized \$3.4 billion over five fiscal years – and support the construction of a national-scale, interstate network.

Those limitations stem from the fact that, under PRIIA, the federal government has only limited ability to independently advance national, interstate interests and actively guide corridor design. Instead, FRA selects corridors for funding based on the applications it receives from states; a program to build a national network is effectively bound by the vision and priorities of individual state applicants; many of these states have little experience in managing a rail program because of the historic lack of federal funding opportunities. Furthermore, there is no unifying national strategy to help guide and coordinate state planning and project delivery efforts, and the one entity with the knowledge and comprehensive view of the national network required to do so – Amtrak – has a role which is not clearly defined.

As a result, a mismatch exists between expectations for transformational growth and a statutory construct better suited for incremental and localized improvements. The ready fix to this mismatch – tempering the scope or timing of the HSIPR effort to fit the current policy architecture – is not, however, sufficient to the need and opportunity. The United States urgently needs an efficient and well-integrated high-speed and intercity passenger rail network as a component of a modern national transportation system. Extending deployment over a longer timeframe will serve only to increase costs, which will come in the form of debt service and the opportunity costs of foregone benefits, not to mention falling further behind our global competitors in high-speed rail development. The appropriate solution is to restructure the

program in a way that can accommodate an aggressive deployment of high-speed and conventional intercity passenger rail corridors.

Accordingly, we offer the following recommendations on how the rail title of the surface transportation bill can create a more growth-oriented framework.

#### *1. Provide Dedicated, Multi-Year Funding*

Major capital programs in any mode typically require a multi-year commitment of funds, and such commitments cannot be routinely made if funding cannot be guaranteed.

Continued reliance on annual appropriations will frustrate efforts to significantly improve and expand intercity passenger rail service in the United States. Amtrak's 40 year history affirms this; reliance on annual appropriations has greatly restricted Amtrak's ability to efficiently undertake comprehensive and multi-year capital programs, since out-year funding availability is never known. Project sponsors must know that when they start work on a corridor or begin to procure equipment, a mechanism is in place to ensure the project can be completed.

We believe that a multi-year federal commitment of capital funding, backed by dedicated revenue, would also make it easier for state grantees to secure financial commitments to match federal grants, maintain assets funded by grants, and operate service. These non-federal commitments are more difficult to secure when federal capital funding is uncertain from year-to-year.

Finally, when creating a dedicated funding source for intercity passenger rail, it is imperative that Amtrak's unique funding needs are recognized. The federal government established Amtrak as the foundation of the national intercity rail passenger transportation system, and modernizing and maintaining that system is largely a federal responsibility. Due to the national, interstate nature of the Amtrak network, federal funding must largely be relied upon to operate, maintain and improve the infrastructure and facilities required to operate Amtrak's long-distance train network and return the Northeast Corridor to a state of good repair. In recognizing that the Amtrak network is a national responsibility, the surface transportation bill should provide dedicated, multi-year investment not only for the development of new services, but also for the maintenance and improvement of existing assets, as proposed by the Administration. Doing so will help overcome years of underinvestment in the core intercity passenger rail network and help sustain robust network economies to support the improvement and expansion of high-speed and intercity passenger rail service in key corridors across the United States.

#### *2. Establish a National Investment Strategy*

Investments in high-speed and intercity passenger rail should adhere to a national strategy for corridor development, which ideally should be articulated in the National Rail Plan that FRA is required to produce under Section 307 of PRIIA. The strategy should establish a map of intercity corridors in which high-speed and conventional passenger rail service can advance key national priorities such as congestion relief, transportation safety, economic competitiveness, energy-efficient travel, environmental protection, and sustainable development.

The corridors should be selected based on an objective analysis of intercity travel market conditions and factors that drive ridership, including:

- The availability of and connectivity to well-developed local transit;
- Current and projected population and population density; and
- Employment and economic activity (including the economic interdependence of metropolitan areas within a corridor).

The national investment strategy should identify, for Congress and the public, the composition of the national intercity passenger rail system and the corridor development that will be needed over a long-term planning horizon in order to meet present and future intercity travel needs. It should be developed by FRA and Amtrak in consultation with regional bodies, states, local governments, host railroads, and other appropriate stakeholders. It should also match corridor development plans to appropriate markets, since not all travel markets require the same level of service. In some cases, very frequent high-speed rail service may be necessary to create a viable alternative to existing options, while conventional service may be more appropriate in other markets. Finally, the map and each component of it should have a delivery schedule, estimated capital cost, and performance standards linked to strategic national outcomes. It is important to note that the greater the levels of transparency and specificity in the federal vision, the likelier it is that the public will understand its potential benefits and be willing to commit public revenue to its completion.

While the strategy should generally guide the program, projects not on the map could still be eligible for grant funds at a lower federal share. For example, an interstate corridor included on the map could follow the Interstate Highway System model and be funded at a 90 percent federal share, while a discrete intrastate project within such a corridor could receive 80 percent, and a corridor or project not on the map could be offered 50 percent federal funding. Such a strategy would give the federal government greater ability to align federal support with truly national and interstate interests, while still offering support for more parochial priorities.

### *3. Create a Clear and Leading Role for Amtrak*

As operator of the intercity passenger rail network in the United States, and the only operator of high speed rail service in North America, Amtrak has a unique perspective and experience. We have longstanding relationships with host railroads and unparalleled experience in planning and operating passenger service. We understand the needs, opportunities and challenges associated with improving existing intercity passenger rail services and creating new services. We also have unique assets and exclusive legislated powers that singularly qualify us to act as an implementing arm of the federal vision to expand high-speed and conventional intercity passenger rail service. Additionally, as a Congressionally-chartered corporation with a federally-appointed Board of Directors that includes the U.S. Secretary of Transportation, the federal government has a major stake in Amtrak.

In recognition these circumstances, the rail title should create a leading and unambiguous role for Amtrak in each aspect of the federal program, whether it be in the field of preserving the existing system or expanding the network.

In the context of the Administration's proposal, this means establishing Amtrak's mission and authorizing its activities and resources within the new program structure of System Preservation and Network Development. Amtrak's role should include planning, operating, maintaining, and integrating rail service across that national network, as well as providing backbone support functions such as marketing, ticketing and reservations systems, workforce training, and regulatory compliance expertise. While it makes sense to consolidate the Amtrak and HSIPR programs into one comprehensive package, Amtrak's role within that package – as the nation's passenger railroad – must be well-defined.

#### *4. Coordinated Corridor Planning and Project Execution*

While a national plan and investment strategy would prioritize key corridor-level city pairs, that alone is not enough to ensure the development of a well connected and highly integrated network capable of meeting strategic national objectives. A more detailed level of coordination in planning and project execution among FRA, Amtrak, regions, states, host railroads, and others will be required to ensure that corridors are integrated with existing passenger rail and other transportation systems in a way that maximizes network benefits and economies of scale. Additionally, it is imperative that planning for new service is done in a collaborative fashion with all anticipated project sponsors from the very beginning of the process.

Many of the high-speed and intercity passenger rail corridors being developed throughout the nation cross state lines and will necessarily involve multiple state, regional and local jurisdictions in the planning process, in addition to non-governmental project partners. Additionally, in many cases high-speed and intercity passenger rail is being considered as a solution to regional problems. Issues such as congestion, pollution and mega-regional agglomeration do not stop at state boundaries and the solutions designed to address these phenomena must therefore be similarly managed across state lines.

Yet multi-state corridor planning is a complex task, particularly for state rail departments that are still building capacity and developing resources. A concentrated effort should therefore be placed on facilitating multi-state partnerships through regional planning exercises that develop the more detailed capital improvement programs needed to implement the national vision. Regional implementation plans should be developed with input from all relevant stakeholders, and should serve to further refine the national planning efforts. A model for how this could work is the Federal Aviation Administration's Airports Capital Improvement Planning Process, where regionally-developed implementation plans respond to nationally-identified needs. This kind of approach would improve coordination and may have the added benefit of insulating corridor development plans from political changes at the state level.

Meanwhile, state and local planning efforts should select the precise routing and alignment of any new track; plan frequencies based on the availability of non-federal operating support; determine schedules, travel times, and top speed requirements based on the travel market; and address station design, location, and access issues.



Amtrak's role in improving coordination is once again crucial. Our existing network is a foundation upon which an expanded network of high-speed and conventional services can grow; the system's significant ridership growth over the past decade demonstrates the importance of integrating it with emerging new corridors. Additionally, we have experience in facilitating successful multi-state partnerships. The Northeast Corridor Infrastructure Master Plan, developed at Amtrak's instigation by twelve states, the District of Columbia, Amtrak, FRA, eight commuter and three freight railroads, exemplifies that type of integrated, coordinated planning effort that should be replicated in other high-priority corridors across the nation.

Federally-funded projects should also adhere to certain protocols. Design and construction standards, for instance, would ensure that technologies, equipment, and systems are interchangeable across the network. Furthermore, a uniform structure for negotiating agreement terms and performance standards with host railroads, with project-specific amendments, would give the public more negotiating leverage and increase timeliness, accountability, and value in the negotiating process. There are significant efficiencies to be gained from a consistent approach, as opposed to having separate entities negotiating distinct agreements for multiple projects.

#### *5. Liability and Insurance*

Finally, as referenced in Amtrak's March 11, 2011 testimony before this Subcommittee, gaps in licensing and insurance requirements for passenger rail operators must be addressed. Federal law and DOT regulations require all interstate motor carriers of passengers – even if they operate just a single minibus – to be licensed and to maintain adequate levels of insurance. There are, however, no comparable licensing or insurance requirements for passenger rail operators. Only Amtrak, which is required by the RPSA to have \$200 million in insurance coverage, and passenger rail operators on rail lines constructed or improved with PRIIA grants are required to maintain any insurance. Other operators do not have to carry insurance even if they receive funding under other federal programs. The lack of a specific requirement creates a situation in which the actual liability could lie with the providers, carriers, or the taxpayers – or potentially all of them. This lack of clarity makes it artificially difficult to start passenger or commuter services, and we would therefore encourage the Committee to address this issue and clarify this situation.

#### **Conclusion**

I will close by observing that I believe there is a tremendous opportunity to address major national mobility issues with rail. When well-directed investment helps us to offer relevant travel choices, people flock to trains. We're carrying more people than all of the airlines put together between New York and the other destinations on the NEC, and we are highly competitive elsewhere, too. I know the committee recognizes the challenges that energy use and congestion pose, and I look forward to working with you in coming months to develop a strategy for transportation funding that preserves and expands relevant mobility choices for the American people.

TESTIMONY OF  
WILLIAM MILLAR, PRESIDENT  
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION  
BEFORE THE  
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS  
OF THE  
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
ON "RAILROADS AND HAZARDOUS MATERIALS TRANSPORTATION  
PROGRAMS: REFORMS AND IMPROVEMENTS TO  
REDUCE REGULATORY BURDENS"

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APRIL 7, 2011

SUBMITTED BY

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The American Public Transportation Association (APTA) is a nonprofit international association of 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical public transportation services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

### INTRODUCTION

Chairman Shuster, Ranking Member Brown and members of the Railroads, Pipelines and Hazardous Material Subcommittee, on behalf of the American Public Transportation Association (APTA) and its 1,500 member organizations I thank you for the opportunity to testify on the next surface transportation authorization bill. Enacting a well-funded, six-year, multimodal surface transportation bill is one of the most important actions that this Congress can take to push our nation's economic engine into high gear. The United States must develop a fully integrated multimodal commuter and high-speed and intercity passenger rail system (HSIPR), without denigrating our world class rail freight system, in order to meet the rapidly expanding needs of an ever-growing and highly mobile population.

### ABOUT APTA

The American Public Transportation Association is a nonprofit international association of 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

### BACKGROUND

Ridership in the overall passenger rail market in the United States has been steadily growing, with commuter rail being one of the most frequently used methods of public transportation for those traveling from outlying suburban areas to commercial centers of metropolitan areas, often to and from places of employment, education, commerce and medical care. The most recently published APTA public transportation ridership report, which provides data on transit passenger ridership for U.S. transit agencies, shows a continued strong demand for public transportation despite the economic downturn, with nearly 10.2 billion trips taken on public transportation nationally in 2010. The demand for commuter rail service has also remained strong, with 13 of 26 commuter rail systems in operation for all of 2010 reporting ridership increase. Similarly, despite the nation's slow economy, Amtrak experienced record ridership in the last fiscal year, reporting a ridership increase of 4.6 percent for an overall ridership of more than 28.7 million passengers. As the current political unrest in many oil producing nations continues, more and more commuters are turning to public transportation to escape rising gas prices, and many transit operators are reporting double digit ridership increases this year.

In addition to commuter rail, it is critical that intercity passenger rail become a more useful transportation option for travelers looking for alternatives to high gas prices and congested road and air travel in many corridors. While much attention has been lavished on three Governors who rejected federal rail funding for their states, 32 other states plus the District of Columbia are forging ahead in planning and implementing rail improvements. Funding from the three states which opted to cancel their HSIPR programs is being redirected by the U.S. Department of Transportation to other HSIPR projects across the country.

It is more important than ever for the U.S. to invest in its infrastructure as the efficient movement of people and goods is essential for sustained economic growth and recovery. A recent study issued by the Government Accountability Office (GAO), entitled *INTERCITY PASSENGER AND FREIGHT RAIL Better Data and Communication of Uncertainties Can Help Decision Makers Understand Benefits and Trade-Offs of Programs and Policies* concluded that an expansion of already congested roadways and airways is not the answer to the country's transportation needs and that the "demand for

freight and passenger travel will continue to grow, as the growing congestion in urban areas and at key bottlenecks in the system costs Americans billions of dollars in wasted time, fuel, and productivity each year.” The GAO report further concluded that “Some see investment in rail infrastructure, along with other policies designed to shift traffic to rail, as important to addressing these problems, pointing to rail’s advantages over cars and freight trucks in terms of energy efficiency, safety, and lower emissions.”

#### COMMUTER RAILROADS

President Bush signed the Rail Safety Improvement Act RSIA (P.L. 110-432) into law on October 16, 2008. This legislation was the culmination of various longstanding safety initiatives. The initiative having the most profound effect on commuter railroads is the mandate that by December 31, 2015, Positive Train Control (PTC) technology must be deployed on all railroad tracks which carry passengers, accommodate hazardous materials or experience heavy levels of service. To assist operators with the implementation of PTC, RSIA authorized \$250 million over 5 years for Railroad Safety Technology Grants. The original intent of the authorization was to provide \$50 million per year in grant funding, with priority given to projects that advance PTC technology and benefit both freight and passenger rail operations. The bill also requires the Secretary of Transportation submit an interim progress report to Congress in 2012 on the status of PTC implementation.

In 2010, the Federal Railroad Administration (FRA) issued its final rule on PTC, putting forth statutory reporting requirements which outlined the process by which railroads are expected to comply with the mandate and established a timeline for plan review and certification. Pursuant to the rule, commuter railroads were required to submit PTC Implementation Plans (PTCIP) by April 16, 2010. Plans were required to include information detailing how an agency intends to meet the functional requirements of PTC, including data regarding matters related to rolling stock, risk analysis and interoperability between host and tenant railroads. I am pleased to report that all APTA commuter rail agency members submitted their plans on time and that those plans are in various stages of approval.

Commuter rail properties across the country have aggressively pursued the funding and technology necessary to meet this safety mandate. There are, however, major obstacles to implementing PTC, related to both funding and technology. These challenges pose significant potential for delays in completing the interim steps required for PTC implementation by the 2015 deadline.

#### Funding Issues

In an attempt to quantify the costs associated with implementing Positive Train Control, APTA surveyed its public commuter rail members in 2009 to ask for initial cost estimates. The results were staggering. The preliminary assessment was more than \$2 billion for commuter railroads, not including costs associated with acquiring the necessary radio spectrum or the subsequent software and operating expenses. According to the Association of American Railroads (AAR), the cost to freight railroads would be significantly greater, with early estimates upwards of \$10 billion. These estimates are now considered to be conservative and industry experts believe costs may in fact be greater.

When the Rail Safety Improvement Act was enacted in 2008, the commuter rail industry was aware that achieving the PTC goal within the mandated timeframes posed significant financial challenges. Nonetheless, the commuter railroads have, and will continue to, work together in good faith to comply with the Act’s requirements. The industry operated under the premise that a new surface transportation authorization bill would be in place to dramatically increase – if not double – the federal capital support for the type of maintenance and state of good repair investments necessary for operating public commuter rails systems, freeing up other capital funds for PTC implementation

projects. Additional federal funding is fundamental to the industry's ability to meet the 2015 deadline. As we move into the latest authorization extension period, it has become clear that a new bill providing increased funding is unlikely to materialize in time to help support the substantial upfront costs associated with PTC implementation. Agencies are likely to be faced with flat or declining federal funding levels that must not only support current safety and state of good repair projects, but to also fund this capital-intensive federal mandate. Commuter railroads that have begun the process of funding PTC are facing very difficult choices -- some agencies are already planning to defer critical safety sensitive infrastructure maintenance on bridges and electrical substations to pay for PTC, while others have concluded they will have to reduce existing passenger service to pay for costs associated with meeting the federally imposed mandate. Delaying critical safety projects and cutting service are not acceptable methods of funding PTC. A multi-year approach to funding PTC projects is critically important to sound investment and the commuter rail industry strongly supports the passage of a well funded six-year multimodal surface transportation bill that significantly increases the level of authorized funding for PTC implementation on commuter railroads.

In addition to concerns about levels of long-term federal support, the downturn in the national economy over the last several years has drastically reduced state and local capital revenue streams, the only other source of funding for large capital projects by commuter railroads. Compounding this shortage of capital funding, many commuter railroad operators have been under tremendous pressure to tap capital funding to pay for operating costs. That pressure led Congress to allow up to 10 percent of 2009's American Recovery and Reinvestment Act (ARRA) dollars to be used for such operating purposes. As expected, this allowance was helpful, but a 2010 survey of APTA transit system members found that over 80 percent of public transit providers were still forced to reduce service, increase passenger fares, lay off staff, or some combination of the three.

The Rail Safety Technology Grant program in the RSIA authorized \$250 million over 5 years to assist in the deployment of PTC related technologies on commuter and freight railroads. Under this program, applicants can request funding for technology related projects, with preference given to those projects that are the collaborative effort of multiple railroads. Unfortunately, funding for the annual \$50 million authorization for this program was not included in the Administration's budget requests for Fiscal Year (FY) 2009, 2010, or 2011 and is absent in the 2012 budget as well. While the Administration did not request funding for PTC, Congress did include \$50 million in FY2010 appropriations legislation for the program, however, recent actions by Congress rescinded that \$50 million, leaving the program unfunded. Furthermore, even if fully appropriated, this authorization was never enough to make a significant dent in the more than \$2 billion estimated cost faced by commuter rail agencies. To help implement PTC, we strongly urge Congress to immediately substantially increase the authorization level for publicly funded commuter railroads to a level that adequately reflects industry needs and ensure that those funds are appropriated quickly.

To ensure that positive train control systems go online by 2015, agencies must begin their procurement processes immediately, committing extremely limited capital funding for PTC implementation. The nation's publicly funded commuter railroads remain committed to implementing PTC on their railroads and ask the federal government to demonstrate the same level of commitment by increasing the authorization to cover at least 80 percent of the cost to implement PTC on publicly funded commuter railroads, as is consistent with other federal Department of Transportation programs. Providing an 80/20 cost share to publicly funded commuter railroads allows operators to install PTC on

their systems while also continuing critically needed state-of-good-repair projects – a level of flexibility that is vital to operators. Redirecting an agency's entire capital budget to install PTC is not an effective use of limited funding, especially if deferred critical safety maintenance projects result in inoperable electrical substations, bridges or other safety critical systems.

It should be noted that the option of using low interest loans from the Railroad Rehabilitation and Improvement Financing (RRIF) program has been mentioned as a potential source of funding for PTC implementation. For publicly funded commuter railroads to assume additional debt in a time of deep economic crisis in order to finance a severely underfunded federal safety mandate is not the answer. For example, at the New York Metropolitan Transportation Authority (NYMTA), early estimates to install PTC on its two commuter railroads, Long Island Railroad (LIRR) and Metro North Railroad (MNRR), are in the hundreds of millions of dollars. Unfortunately, with an annual debt service of \$1 billion dollars, NYMTA is at its practical indebted limit and adding hundreds of millions of dollars in new debt may impact creditworthiness. Similarly, the North County Transit District (NCTD) in San Diego estimates its PTC costs to be in the \$60-90 million range, despite an annual capital budget of only \$10-\$15 million. Significant federal investment must be part of the equation to fund the enormous cost of PTC implementation on our nation's publicly funded commuter railroads.

#### Technological Issues

The technological obstacles associated with implementing PTC by 2015 are proving to be equally as challenging. Positive Train Control technologies are largely untested in the commuter rail environment, with no successful testing achievements to date. In comparison to freight and intercity rail operations, the commuter rail environment poses unique challenges given the high traffic volumes, close headways, and reliability demands that have a low tolerance for service delays. For example, MTA Metro North commuter railroad operates approximately 700 revenue trains daily. During the peak morning rush hour, as many as 200 trains are required to meet the demand. Ensuring successful and cost efficient operations to passengers depends on providing daily, on-time, reliable service, therefore, PTC systems must be carefully integrated to allow for these high volumes of service and must be calibrated to meet the needs of the precise operating environment of a commuter railroad.

Further complicating matters is the realization that few vendors have the expertise necessary to install PTC technologies on freight and passenger railroads. There are currently no "turn-key" vendors who can install all components of a PTC system. Instead, to implement PTC it will be necessary to contract with multiple vendors who provide differing services. Competition to secure these vendors will likely result in services being sold to the highest bidder, pushing privately held companies to the top of the list and publicly funded commuter railroads to the bottom.

Vendor concerns aside, the fact remains that most of the technology associated with PTC simply does not exist at present. There is no off-the-shelf technology available to freight or commuter railroads, as nearly all components are still in the research and development phase. For example, it is our understanding, based on information provided at a meeting of the Interoperable Train Communication Committee (ITC), that the radios to be used for interoperable communications, a critical piece of the PTC puzzle, will not be available until the first quarter of 2012. These radios are necessary in order to complete work on the software and messaging platform over which the radios are expected to operate. Furthermore, these radios must be complete in order for commuter railroads to begin the procurement process, and any delays in their development will result in delays in procurement.

The December 2010 report by the U.S. Government Accountability Office entitled *"Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology"* also found that while all railroads impacted by PTC requirements have been putting forth good faith efforts to meet the mandate, there is strong potential for delays if certain problematic components of the process are not rectified in a timely manner. The most striking information to come out of the report is the GAO's likening of the PTC technology rollout to that of the development of a military weapons system, noting that "demonstrating a high level of maturity before allowing new technologies into product development programs increases the chance for successful implementation, and that, conversely, technologies that were included in a product development program before they were mature later contributed to cost increases and schedule delays." We therefore urge this committee to include language to its surface transportation authorization bill to amend the Rail Safety Improvement Act of 2008 to extend the PTC implementation deadline for commuter railroads to December 31, 2018, and to provide federal funding equal to 80 percent of the estimated \$2 billion implementation costs on commuter railroads.

We also ask this committee to include language which directs the FCC to set aside at no cost enough radio frequency spectrum to ensure commuter railroads are successful in meeting this federal mandate. The implementation of Positive Train Control requires an extensive communications infrastructure to support the transmission of train control based data communications and the RSIA did not include provisions for allocating spectrum to commuter railroads for PTC purposes.

Notwithstanding, we do not believe that an extension should preclude commuter railroads who have committed to implement PTC prior to the 2015 deadline, such as the Southern California Regional Rail Authority (SCRRA) or other Southern California properties, from moving forward with their advanced implementation schedule. We fully understand, appreciate and support SCRRA's concerted effort to implement PTC on its rail network by 2012.

APTA strongly supports the early implementation of PTC in Southern California and endorses the SCRRA service area to be the first interoperable PTC system in service, allowing it to serve as the basis to inform all commuter railroads on PTC. Further, we believe that federal resources should be provided, including expeditious action by the Federal Communications Commission (FCC) on the pending 220 spectrum acquisition application by SCRRA, and on the allocation of a no cost radio spectrum set aside for PTC on commuter railroads nationwide. We urge the Federal Railroad Administration to devote the necessary resources to fully support SCRRA's early implementation of PTC on its commuter rail system by 2012.

All commuter railroads can learn from early implementation efforts and prevent costly mistakes from being repeated across the nation. These early implementation efforts will likely result in a more cost-efficient and technologically sound blueprint for implementing PTC on other commuter railroads. Extending the date would also give Congress the opportunity to review both the FRA's 2012 mid-term Report to Congress on the Status of PTC Implementation as well as the Federal Transit Administration's report on PTC, which is expected to be completed in 2013.

On March 17, 2011, APTA member Joseph J. Giulietti, Executive Director of the South Florida Regional Transportation Authority testified at a hearing before the House Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials. In this hearing, Mr. Giulietti testified that many commuter railroads are facing the hard decision of choosing between

implementing costly PTC technologies or performing critical system safety state of good repair (SOGR) construction and maintenance projects. Subcommittee Chairman Bill Shuster (R-PA) asked Mr. Giulietti to work with APTA to determine which safety critical state of good repair projects would be deferred in order to implement PTC by 2015. APTA conducted a brief survey of its members and found that examples of potentially deferred SOGR projects range from delayed installation of fencing to prevent access to vandals to delayed bridge replacement construction which may result in restrictions for freight rail operations to the complete shutdown of a commuter railroad if viable funding options are not made available.

Delaying critical safety projects and cutting service are not acceptable methods of funding PTC and we urge this committee to provide adequate funding to ensure the commuter railroads are successful in their efforts to implement PTC.

#### Spectrum Issues

Though it is not within the jurisdiction of this subcommittee, I would like to address the issue of radio frequency spectrum as it pertains to interoperable communications required under the RSIA.

The implementation of Positive Train Control will require an extensive communications infrastructure to support the transmission of train control based data communications. Unfortunately, the RSIA contained no provision for allocating spectrum for PTC purposes, therefore commuter railroads are actively seeking to acquire radio spectrum on the open market to support wireless and interoperable radio communications. While some agencies have been successful in acquiring spectrum, most have run into significant difficulties, as spectrum is a finite and highly competitive commodity that some qualified license holders are offering for sale at exorbitant rates. Two agencies currently have applications pending before the FCC to settle acquisition disputes involving qualified spectrum license holders and third party claimants. To date, the FCC has not acted on these applications and has taken no action to ensure that spectrum is available to support implementation of PTC in time to satisfy the 2015 deadline.

The Federal Railroad Administration weighed in on the matter with a July 2010 letter from Administrator Joseph C. Szabo to the FCC requesting a set aside of spectrum for publicly funded commuter railroads. In his request, Administrator Szabo astutely identified that since publicly funded commuter railroads "are specifically operated to provide a public service, as opposed to private gain, they rely heavily on public funding to meet operating and capital requirements...the financial ability of such railroads to obtain the necessary spectrum to meet the statutory deadline is questionable at best."

A nationwide PTC spectrum needs analysis is currently being conducted, in conjunction with the Transportation Research Board (TRB), but it is our understanding that this report will not be available for at least another six months. To ensure that PTC is operational by the federally mandated timeline, spectrum acquisition must take place immediately. Therefore, pending completion of the nationwide spectrum needs analysis, we urge the FCC to act now to reserve and reallocate spectrum in the following urban areas with major commuter rail systems, which, because of the current density of all railroad traffic, already experience significant communications congestion: New York, Chicago, Boston, Philadelphia, Los Angeles, San Francisco, Baltimore, Miami, Washington, D.C., Seattle, San Diego, Dallas/Fort Worth, and Salt Lake City. It is anticipated that the PTC spectrum needs analysis may identify other systems that will also experience difficulty in acquiring spectrum for PTC, and this interim request for a PTC spectrum set aside may need to be supplemented to cover additional systems after the needs



analysis is completed. Granting this set aside will remove a costly and burdensome roadblock for publicly funded railroads on their path to meeting the PTC deadline.

#### **HIGHSPEED AND INTERCITY PASSENGER RAILROADS**

To meet the rapidly expanding needs of an ever-growing and highly mobile population, the United States must develop a fully integrated multimodal high-speed and intercity passenger rail system. It is more important than ever for the U.S. to invest in its infrastructure as the efficient movement of people and goods is essential for sustained economic growth and recovery. Investing in high-speed rail projects will produce new passenger rail networks that will create hundreds of thousands of private sector, construction and manufacturing jobs as well as stimulate domestic business growth that will generate additional jobs in related consumer-driven industries. According to data from the U.S. Conference of Mayors, expenditures for high-speed rail construction are estimated to support 24,000 jobs for each billion dollars of investment.

APTA strongly supports President Obama's proposal to provide \$53 billion dollars, from non-highway/transit trust fund account monies, over six years to improve and expand high-speed and intercity passenger rail and urges Congress to provide the first \$8 billion which was included in the President's Fiscal Year 2012 (FY12) budget request. Further, APTA strongly opposes any attempts to rescind or eliminate HSIPR funding to ensure that the 32 states and District of Columbia which are forging ahead with planning and implementing high-speed and intercity passenger rail improvements can continue their efforts to modernize our nation's passenger rail system.

Some have questioned whether the American public supports high speed rail. An October 2010 study sheds some light on this question. APTA worked with Synovate, a global market researcher, to conduct a survey of nearly 25,000 adults across the country on attitudes towards high-speed rail service. The survey found that nearly two-thirds of adults (62 percent) said they would "definitely or probably use" high-speed rail service for leisure or business travel if it were an option, citing convenience and saving money as key factors in determining whether they would choose high-speed rail over other modes of transportation. When asked how important various factors would be in choosing high-speed rail service, survey respondents ranked the top four as follows: (91%) shorter travel times compared to driving to my destination; (91%) less expensive than flying to my destination; (89%) less expensive than driving to my destination; and (85%) integration with local public transit so I can avoid use of rental cars, cabs and parking fees. Notably, while 62 percent said they would definitely or probably use high-speed rail service, only 11 percent of survey respondents said they would "definitely or probably not" use the service.

The strong public demand for high and higher speed rail is also evident at Amtrak, the nation's intercity passenger rail provider. Despite chronic underinvestment, Amtrak has reported record ridership numbers with sustained growth over the last 16 months. In fact, according to recent reports, Amtrak ridership achieved an all time record high in the month of February 2011 with nearly 2.1 million passengers. The higher-speed Acela Express train, which operates on Amtrak's Northeast Corridor, posted near double-digit increases in Fiscal Year 2010 with a ridership increase of 9.2 percent. These numbers highlight the strong public demand for high speed passenger rail as an alternative transportation option.

In addition to the strong public demand, anticipated population growth in the United States further bolsters the need for additional modes of transportation. U.S. Census Bureau projections illustrate that the population of the United States is expected to grow by nearly 100 million people in

the next 40 years. Put simply, with chronically congested roadways, airways and passenger rail systems operating at near capacity, our current transportation network cannot sustain expected usage increases brought about by the projected growths in population. Furthermore, the carbon footprints of an additional 100 million people will likely result in significant environmental challenges. Studies performed by Center for Neighborhood Technology found that high-speed rail cuts CO<sub>2</sub> emissions nationwide, as well as in every corridor where projects are proposed. They further projected total emissions savings of 6 billion pounds of CO<sub>2</sub> per year if all proposed high-speed rail systems they studied are built. The strong public demand for high-speed rail, coupled with expected population increases which may result in increased carbon emissions, demonstrates that our nation must look to new modes of transporting passengers. High-speed rail provides the logical solution.

From a business perspective, creating a high-speed rail network in the United States will not only produce new passenger rail networks, but it will create hundreds of thousands of private sector, construction and manufacturing jobs and generate domestic business growth. Studies conducted by the U.S. Conference of Mayors show that expenditures for high-speed rail construction are estimated to support 24,000 jobs for each billion dollars of investment. Reports from the California High-Speed Rail Authority project 600,000 full time construction jobs will be created over the course of building their corridor and that 450,000 permanent new jobs will result from high-speed rail related economic growth over the next 25 years.

In its report entitled *U.S. Manufacture of Rail Vehicles for Intercity Passenger Rail and Urban Transit*, Duke University found that an extensive domestic supply chain for rail manufacturing already exists and that this geographically diverse network stands ready to respond to anticipated demands. This supply chain includes at least 249 U.S. manufacturing locations in 35 states. The Duke University report also identified a total of 15 railcar builders, 5 locomotive builders and 159 component suppliers ranging in size from small firms with fewer than 20 employees and a single manufacturing site to larger and more diverse firms with thousands of employees and multiple domestic manufacturing locations.

The benefits of investing in high-speed rail networks transcend passenger rail as upgraded tracks, bridges and rights of way spur efficiencies for freight and commuter railroads which operate on shared tracks. Two recently signed agreements between host freight railroads and state departments of transportation in Washington and North Carolina are indicative of the progress being made between private sector companies and public passenger rail providers. Such agreements will ensure that our world-class freight system continues to operate at maximum efficiency while allowing for our country to modernize its passenger rail system. To continue these successful and mutually beneficial partnerships between HSIPR, freight and commuter rail providers, APTA supports allowing common and incidental benefits on commuter and regional passenger rail systems to be an eligible part of corridor investment.

In 2010, APTA approved consensus based principles for a high-speed passenger rail legislative framework. These comprehensive principles, which among other things call for a dedicated funding source other than the highway trust fund (HTF), and a streamlined National Environmental Protection Act (NEPA) review process, also encourage an efficient combination of private and public sector leadership in the development of new rail service. I would highlight APTA's recommendation to include private sector participation in the construction of new rail infrastructure: "HSIPR corridor projects shall be financed through a combination of federal, state, local, regional and private funding. Tax incentives should be provided to attract private sector investment and participation." I would also highlight our recommendation to facilitate competition among operators: "the [HSIPR] program should be designed

to encourage open, strong and fair competition among competing pre-qualified operating and rail service companies.”

To review APTA’s HSIPR program principles, see Appendix I, “Fleshing Out an Ongoing Federal High-Speed and Intercity Passenger Rail Program: Principles for a Legislative Framework,” Adopted by the APTA Board of Directors on October 23, 2010.

#### **HIGH-SPEED RAIL WORKFORCE DEVELOPMENT AND STANDARDS DEVELOPMENT**

High-speed rail has been in operation in Japan for nearly 50 years and in France for 30 years, yet aside from the higher-speed intercity service provided by Amtrak’s Acela Express trains, high-speed rail has never been offered in the United States. As such, the corresponding workforce has never been properly developed or trained. In 2010, to support the Federal Railroad Administration’s efforts to provide true high-speed rail service in the United States, APTA partnered with the International Union of Railways (UIC), an international organization with 200 members who provide rail service on 5 continents, to begin the process of training domestic high-speed rail service providers. The 2-day practicums, which were held in Washington, DC, Chicago and Los Angeles brought together international high-speed rail practitioners and domestic rail experts for an in-depth series of graduate-level classes that provided information on how to implement high and higher speed rail in the United States. Presentations ranged from engineers discussing issues such as tunnel boring and construction to an industrial designer who discussed the importance of visually appealing trains and infrastructure. Domestic demand for high-speed rail workforce development is so great that in May 2011, APTA and the UIC will again host the practicums and add an advanced track that builds off of the introductory session provided in 2010.

In July 2012, APTA will partner with the American Association of Railroads, Amtrak, and the UIC to host the 8th UIC World Congress on High-Speed Rail. For nearly 20 years the World Congress has brought together high-level government officials from around the world, as well as experts from international rail authorities and organizations to share information on technical matters and promote cooperation between international rail providers. We look forward to bringing the world’s leading experts on high-speed rail to the United States to share their experiences.

Achieving the highest level of safety for high-speed rail will ultimately be our number one goal. As an officially accredited Standards Development Organization (SDO), APTA is working to create standards for matters related to high-speed rail. For the last year, APTA has worked with the FRA through their Railroad Safety Advisory Committee (RSAC) and the emerging high-speed rail industry to develop standards related to railcar crashworthiness and the tracks over which high-speed rail trains will operate. In March 2011, APTA hosted a meeting of its Standards Committee to develop a framework by which the high-speed rail standards program will be established and is currently working with the FRA to advance this initiative.

#### **FEDERAL TRANSIT ADMINISTRATION PROGRAM REFORMS**

Although this Subcommittee does not have specific jurisdiction over Federal Transit Administration Programs (FTA), I would like to mention APTA’s recommendations for reforming two programs that have a significant impact on our Commuter Rail operators – the Major Capital Investments Program (New Starts) and the Fixed Guideway Modernization Program. Both of these accounts provide significant resources for the construction, expansion and maintenance of our nation’s commuter rail system.

#### New Starts Reforms

Historically, the New Starts program has provided substantial investments for new commuter rail systems and the expansion of existing systems. Last week I offered testimony to the Highways and Transit Subcommittee of this Committee, outlining suggestions to reform the New Starts Program to streamline the program and help speed project delivery. As I noted, the New Starts program is critical to the future of passenger rail. However, the process for developing and delivering a project can stretch out for a decade or longer, and program reforms must be addressed in the next authorization bill.

Unlike most other FTA programs, the New Starts program is funded from the General Fund, not the Mass Transit Account of the Federal Highway Trust Fund. Funding for New Starts was included in funding guarantees for highway and transit programs, and the success of these major, multi-year capital projects requires predictable support by Congress and FTA. Congress established Full Funding Grant Agreements to ensure this predictability.

Going forward, whether the New Starts program is funded out of the general fund or from a trust fund, APTA believes that the program should grow at the same rate and with the same funding guarantees as the rest of the transit program. New Starts is essential to enhancing our nation's mobility, accessibility and economic prosperity while promoting energy conservation and environmental quality.

APTA asks Congress to eliminate the requirement for an Alternatives Analysis stage in New Starts as is required by current law. Work completed during the Alternatives Analysis stage often replicates work that is also federally required under the Metropolitan Transportation Planning process and/or the National Environmental Policy Act (NEPA) alternatives analysis stage. In cases where local agencies and officials deem that a corridor-level planning study, or more formal Alternatives Analysis, would be of value for Major Capital Investment Projects, they may still perform such studies if this phase of the New Starts process is eliminated.

APTA also calls for reducing the number of approvals that a project must receive from FTA throughout the entire New Starts process. Approval of a project to enter the New Starts program should convey FTA's intent to recommend a project for eventual funding, provided the project continues to meet certain criteria and satisfies NEPA requirements and other project development conditions. This change would eliminate the current need for separate formal approvals to enter the Preliminary Engineering and Final Design stages. Waiting for each of these approvals means that all project development work stalls between each successive step, often lagging for months at different steps in the process. APTA has also called for the use of Project Development Agreements (PDA), which have been used in the Small Starts process, to set schedules and roles for both FTA and the project sponsor. A PDA can also be the basis for an Early Systems Work Agreement once the NEPA process is completed with a Record of Decision (ROD) or a Finding of No Significant Impact (FONSI).

I want to note that FTA has been developing very similar recommendations that are based on the agency's extensive experience and efforts to improve program delivery. In recent years, FTA has already made changes that simplify project rating criteria and ensure that rating criteria better reflect the full range of benefits from New Starts and Small Starts projects, another APTA priority. In addition, the President's FY 2012 budget, which contains early policy recommendations for authorization, specifically suggests eliminating the Alternative Analysis process and reducing the number of FTA approval steps in the New Starts process. We look forward to working with the Committee and the Administration to speed the delivery of high-quality projects under the New Starts program.

Finally, previous project applicants have been unable to apply for a loan under the Transportation Infrastructure Finance and Innovation Act (TIFIA) program because of concern that the total amount of any loan taken, not the federal subsidy cost of a TIFIA loan, would be counted toward the federal share of the project's total cost under New Starts project rating criteria. This obstacle should be eliminated. Financing programs should, to the greatest extent possible, be available to accelerate the delivery of New Starts projects.

#### Fixed Guideway Modernization Program

The fixed guideway modernization program, commonly referred to as the "rail-modernization" program, provides formula grants to fixed guideway transit systems, including commuter rail operators, to modernize or improve existing systems. Funds can be used to purchase and rehabilitate rolling stock, track, line equipment, structures, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment including computer hardware and software, system extensions, and preventive maintenance. Fixed guideway modernization includes all fixed guideway modes; exclusive busways, trolley coach, ferry boat and all types of rail transit.

This program was initially designed to rehabilitate the nation's oldest passenger rail systems. Program updates over the past two decades through the authorization process have resulted in a complex, seven-tiered funding formula. APTA proposes to simplify the rail modernization program by replacing the current seven tiers with a simpler two-tiered fixed guideway modernization formula. The first tier would use the existing apportionment tiers to determine the base amount for all users that currently receive funds under this program. This proposal assumes that funding for the program will grow over the authorization period, and therefore all current grantees would be "held harmless" from funding decreases in the first tier. In addition to the base amount for the first tier, 50 percent of all new funds would be dedicated to the first tier to grow this category.

The second 50 percent of new funds for the program would fund a second tier. These funds would be distributed based on the Section 5307 rail tier formula for all fixed guideway properties or line segments that meet the seven year minimum age requirement. The second tier would ensure that new fixed guideway systems will become eligible to receive rail modernization funds once they reach the seven year threshold. APTA believes that this new two-tiered program will not only simplify the process for determining the annual apportionment under this program, but also strike a better balance between addressing the needs of our nation's oldest fixed guideway systems and ensuring that newer systems are maintaining a state-of-good-repair.

#### **CONCLUSION**

Thank you again for the opportunity to testify today on matters related to commuter, high-speed and intercity passenger rail. APTA is appreciative of the work this subcommittee and its staff have done to ensure that all stakeholders are given the opportunity to provide their insights on the next transportation authorization bill. We urge this subcommittee to continue its work to assist commuter railroads as they work to implement PTC by extending the implementation deadline to 2018, authorizing at least 80 percent of the \$2 billion dollar industry need, and working with the FCC to establish a set aside for PTC spectrum purposes. APTA also urges the committee to support the President's budget request of \$53 billion over 6 years to modernize our nation's high-speed and intercity passenger rail network and to streamline the New Starts and Fixed Guideway Modernization programs to ensure efficient and timely project completion.

## APPENDIX I

Adopted by the APTA Board of Directors (October 3, 2010)  
 American Public Transportation Association  
**Fleshing Out an Ongoing Federal High-Speed and Intercity Passenger Rail Program:  
 Principles for a Legislative Framework**

1. *Preamble:* The act should clearly state the intent to integrate high-speed and intercity passenger rail (HSIPR) corridors across the United States with the existing Amtrak network, with commuter rail and transit operations wherever possible to create a national passenger rail network. This network would be part of a balanced, multi-modal, and inter-connected national transportation system that would enable America's air, rail, bus and highway systems each to function most efficiently. It should speak to the national benefits to be achieved in doing so, including, among other things:
  - the importance of HSIPR in meeting the critical mobility needs of Americans by adding needed capacity to our transportation network, and in so doing provide new travel options;
  - the relation between transportation policies to overarching national priorities including energy, environment, and economic goals;
  - the opportunity to generate hundreds of thousands of new American jobs and nurture the growth of existing domestic businesses and new domestic businesses, as well as to create many additional jobs due to for economic development around stations; and
  - the national benefits gained through connecting America's economic hubs to each other and to rural America.

Together, this represents a new, forward-looking vision for 21<sup>st</sup> century transportation enabling choice, mobility options, connectivity and economic growth.

2. *HSIPR Title in Surface Transportation Authorization Legislation:* A separate HSIPR title shall be included in the next authorization of federal surface transportation laws, funded by other than Highway Trust Fund revenues.
3. *Funding levels:* Not less than \$50 billion in federal funding should be provided over the initial six-year authorization period, supplementing the \$10.5 billion provided through the American Recovery and Reinvestment Act of 2009 and FY 2010 transportation appropriations. In this context, APTA reaffirms its call for a separate transit title of no less than \$123 billion over six years.

4. *Funding partnerships:* The federal share shall be the standard 90 percent share consistent with the construction of the interstate highway program. HSIPR corridor projects shall be financed through a combination of federal, state, local, regional and private funding. Tax incentives should be provided to attract private sector investment and participation.
5. *Dedicated funding source:* There should be a dedicated federal revenue source, other than revenue sources used to fund the Highway Trust Fund, for planning, design and construction of HSIPR. Consistent with White House announcements, proceeds from the auction of spectrum for mobile wireless use could be used as a source of funding for the initial years for the federal HSIPR program. This is consistent with previously adopted APTA principles that require that HSIPR investments not interfere with the federal Highway Trust Fund.
6. *Ability to leverage funding:* Revenue streams created through dedicated funding programs should be structured to encourage the leveraging of funds through public and private financing, thus enabling projects to be implemented faster and at less expense, and with shared risk. HSIPR programs should be broadly eligible for all federal credit support programs.
7. *National vision, plan and map:* The national vision for high-speed and intercity passenger rail shall be represented through a national map and corridor descriptions reflecting defined and agreed-to passenger rail corridors that meet criteria and increase the speed of passenger rail transportation. The intent is for these defined and agreed-to corridors to be completed over a multi-year period through a system of scheduled federal payments. Drawing from a dedicated and predictable funding source, projects would be allocated sufficient funds so that they can be completed on a reasonable schedule. This national plan will be updated periodically, shall identify obligation requirements for each corridor, shall add additional corridors as such corridors are justified, and shall recognize that additional projects in the planning stages will be added over time. The map shall include the Northeast Corridor and recognize the cost to bring the Northeast Corridor to a state of good repair and to assure capacity for growth.
8. *A combination of annual and discretionary grants:* Corridors represented on the national map shall receive annual formula allocations of funds consistent with the schedule to complete such projects. Overall, a majority of HSIPR funding should be provided on a steady, predictable basis. Additional funding should be awarded on a discretionary basis to projects which are ready to go and are judged to have special merit and rank high based on national criteria which could include, among other things, competitive travel times, regional connectivity, frequency of service, and national significance. Consideration would be given where advancing the project schedule would significantly enhance the overall benefits of the project. In addition, projects acquiring separate rights-of-way to avoid operating in mixed traffic should be encouraged through the discretionary grant program. Planning funds shall be provided to nurture the next generation of projects towards national systems goals.

9. *Eligibility:* HSIPR grants shall be awarded to states, groups of states, or public authorities authorized by states or groups of states pursuant to sections 301, 302 and 501 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).
10. *Local and regional planning/decision-making:* Projects should be defined at the state and local level, but should align with national goals and objectives. The planning process should determine the type of project most appropriate for the particular region (i.e., Express Rail 150 +mph; Regional Rail 110-150 mph; Emerging Rail 90-110 mph; Conventional Rail 79-90 mph.) Public involvement is a key element. The national vision, plan and map should be the result of a consultative process with state and local governments. State rail plans should address state level funding issues, service integration issues, short and long-term sustainability, and shall establish the terms of private sector involvement consistent with the National Rail Plan.
11. *Grant agreements:* Funding shall be provided through multi-year contract authority. Grants should fund minimal operable segments or provide added utility on selected corridors.
12. *Program delivery:* The federal grants review process should be kept simple. Work in pre-approved corridors should proceed with minimal grant review. Accountability should be enforced through self-certification and post-delivery reviews, rather than through a burdensome process that holds up projects by requiring extensive documentation up-front. However, the U.S. DOT should provide initial reviews and screening as to whether applications or applicants comply with express requirements of grant statutes before grants are released. U.S. DOT should establish common standards, across all U.S. DOT agencies, for the efficient administration of provisions of the National Environmental Protection Act (NEPA). An expanded system of categorical exclusions should be developed and widely applied. A process for waiving non-statutory requirements when needed to expedite projects should be established for HSIPR projects, as it currently exists for FHWA projects under the SEP 15 program. Permits and review shall be treated in an expedited manner, with reviews coordinated in a concurrent manner and not handled sequentially.
13. *Expedited grant process:* The Secretary may approve funding prior to all grant issues being resolved, provided there is agreement on all critical aspects of the project and on key contractual areas and passenger service outcomes, and provided that the grantee shall remain accountable for addressing remaining issues in a reasonable period of time and will be held accountable through normal audits. Adequate funds shall be available for program administration in order that the HSIPR program is managed efficiently and so that grants and project decisions can proceed expeditiously.



14. *Connectivity:* Connectivity with existing transportation systems and networks must be a key element of project plans and should be considered in funding decisions. Project scopes may include activities which establish and support local and regional public transportation services connecting to facilities. All corridor projects shall include a plan outlining strategies for connecting with current passenger rail, urban transit, regional and intercity bus, airports, highways, bicycle networks, and pedestrian networks.
15. *Shared Facilities:* Common, incidental benefits afforded commuter and regional passenger rail systems as a result of investments in HSIPR corridors should be an eligible part of the corridor investment.
16. *Contingencies:* Project agreements should provide for a process that will allow reasonable adjustments to the project cost, scope and schedule based on new information that becomes available and unanticipated new circumstances that arise in the course of implementing a project. Financial risk should be shared by all parties.
17. *Competition:* The federal and state supported HSIPR program should be designed to encourage open, strong and fair competition among competing pre-qualified operating and rail service companies. To ensure fair competition, all competing companies must comply with all federal railroad laws.
18. *Access to rail freight corridors:* Access to freight railroad rights-of-way is a significant issue in the implementation and the eventual outcome of the federal HSIPR program. Federal policies should encourage growth of both rail-passenger and rail-freight operations, as there are substantive public benefits to both. Within this context, an equitable and fair process for negotiating passenger rail operational access on freight railroads and in the use of adjacent freight rail rights-of-way must be established.
19. *Terms of liability:* Within an affirmative context of safety, the existing \$200 million cap on liability as established in the Amtrak Reform and Accountability Act of 1997 should apply to all claims against high-speed and intercity rail operators, sponsoring agencies, host railroads, and commuter railroads and shall apply consistently regardless of the operating entity or its contractor. Without such statutory limits, the cost of obtaining insurance and the cost of rail passenger operations will become prohibitively costly. Host railroads shall not require liability coverage in excess of the statutory cap.

20. *Research, Technology and Standards:* The federal HSIPR program should support standards development, technology research, a cooperative research program, job training, career development, data collection, information management and international exchange. As with the interstate highway program, consideration should be given to establishing common standards to be consistent throughout the national program, to assure inter-operability and other desirable national features.
21. *Disadvantaged Business Enterprise (DBE) Program:* A DBE program for HSIPR should be established.
22. *Grade Crossing Elimination:* Building on the Federal Highway Administration's Section 130 grade-crossing elimination program, a robust federal grade-crossing elimination program should be established and adequately funded within the Federal-aid highway program, with recognition of high-priority passenger rail corridors, and high-risk grade crossings within those corridors.
23. *Access for Persons with Disabilities:* In writing a new HSIPR title, Congress shall recognize and support the continued applicability of the Americans with Disabilities Act.

**INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**



**STATEMENT OF**

**KEVIN B. O'CONNOR  
ASSISTANT TO THE GENERAL PRESIDENT**

**BEFORE THE**

**HOUSE SUBCOMMITTEE ON  
RAILROADS, PIPELINES AND HAZARDOUS  
MATERIALS**

**ON**

**RAILROAD AND HAZARDOUS MATERIALS  
TRANSPORTATION PROGRAMS:  
REFORMS AND IMPROVEMENTS TO REDUCE  
REGULATORY BURDENS**

**APRIL 7, 2011**

Good morning, Chairman Shuster, Ranking Member Brown, and distinguished members of the Subcommittee. Thank you for the opportunity to testify before you today. My name is Kevin O'Connor, and I am pleased to appear before you today on behalf of IAFF General President Harold Schaitberger, and the 300,000 men and women who comprise the International Association of Fire Fighters.

IAFF members protect eighty percent of the nation's population and serve as the first line of defense during any hazardous materials incident. I testify today not only as a representative of those responders, but also as someone who understands first-hand the importance of this issue. Before joining the IAFF staff, I spent 15 years as a fire fighter in Baltimore County, Maryland, and have responded to hundreds of emergency calls involving hazardous materials. In fact, for a portion of my career, I was assigned to an Engine company that was a satellite hazmat response team and was trained to the technician level of emergency response.

It is from this front-line perspective that I wish to discuss the essential role the Department of Transportation plays in ensuring a safe and effective response to hazmat incidents. DoT's ability to deliver appropriate training and time critical information are as essential as turnout gear in keeping fire fighters safe, and protecting the community.

#### **The Need for Training**

According to the National Fire Protection Association (NFPA), fire departments in the United States receive over 350,000 calls related to hazardous materials emergency response each year. As the number of hazardous materials incidents has increased, so too has the complexity and dangerous nature of responding to such incidents. This is especially true as it relates to our nation's transportation systems. Hazardous materials of nearly every class are to be found on our nation's roads and rails, skies and seas. These materials may react violently to air or water, cause serious injury to individuals when inhaled or upon skin exposure, and may pose new hazards when exposed to other materials. While their transportation is generally safe and uneventful, an accident or incident involving hazardous material can easily place the general public, as well as the individuals who respond to such incidents, at risk.

When an incident involving the transportation of hazardous materials does occur, the individuals tasked with responding to and containing the incident are, almost without fail, fire fighters. Unfortunately, despite the potential for a hazmat incident in every community in America, far too many fire fighters are insufficiently trained to ensure a safe and effective response. In its Second Needs Assessment of the U.S. Fire Service, NFPA estimates that thirty-eight percent of fire fighters whose duties involve hazmat response lack formal training of any kind. Furthermore, only twenty-nine percent of fire departments report all personnel to be trained in even the basics of hazmat response.

While it is clear from such figures that training is needed for new recruits and personnel who have yet to undergo training, it is also worth noting the hazardous materials response

training is not a one-time event. It is essential that all first responders undergo refresher training to ensure continued proficiency. The Occupational Safety and Health Administration's Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) requires emergency responders to receive annual refresher training "of sufficient content and duration to maintain their competencies." In addition to providing responders the opportunity to maintain their skills, refresher training is vital to familiarize responders with new technology which may be used or encountered during a response.

Unfortunately, the lack of adequately trained personnel in the fire service can have serious real-world implications including property loss, death and injury to both private citizens and responding fire fighters.

In addition to the threat inadequate training poses to lives and property, an improper response can also have serious economic implications. Emergency managers quite properly consider worst case scenarios. If there is a hazmat incident in which the first responders lack the training necessary to assess the danger, emergency management officials will err on the side of caution. This means that major highways are shut down and even large scale evacuations are ordered unnecessarily. These everyday occurrences result in millions of dollars of lost productivity.

Given the threat to individuals' personal safety and economic well-being, it is incumbent that we ensure fire fighters nationwide receive hazardous materials training to provide a safe and effective response.

#### **IAFF Training Programs**

Under DoT's Hazardous Materials Emergency Preparedness (HMEP) grants program, the IAFF has received an annual grant to train instructors to deliver hazardous materials training to emergency responders nationwide, in the largest metropolitan areas to remote rural communities. The IAFF takes its mandate to train first responders extremely seriously, employing a full-time, dedicated staff to administer our training programs. We provide training to any and all responders whose duty potentially includes hazmat response, including both professional and volunteer fire fighters, free of charge. This grant has enabled the IAFF to significantly increase training rates in the first responder community, training over 3,000 instructors who have gone on to provide training to nearly 70,000 emergency responders.

The IAFF's unique training model avails responders with real-world training in hazardous materials response that few institutions can match, delivered by instructors who are both certified fire instructors and certified hazmat responders. Furthermore, because the instructors trained through the IAFF's HMEP program deliver training directly to responders in their own communities, instructors are able to tailor their presentations to address the unique concerns and challenges to a particular community, such as a chemical plant or specific hazardous materials shipping route.

Independent evaluations of IAFF training have found its training programs to be cost-effective, providing significant hands-on training for a low cost per contact hour.

The IAFF's model is a "train the trainer/peer to peer" program. Fire Fighters who are trained to administer the course actually teach their colleagues. Consequently, because of the shared experiences, there is an inherent trust and connection between teacher and student. Moreover, the program is financially efficient because overhead is kept at a minimum. Trainers are only compensated when they are actually teaching a class. There is no down time.

A cadre of qualified instructors are located across the nation. When a jurisdiction seeks a training program, the IAFF assigns instructors from the general area. Consequently, travel and associated costs are greatly reduced.

Evaluations have also found instruction to be highly effective, with students reporting high post-course confidence and achieving high post-quiz scores. Quite simply, the IAFF provides the finest hazmat training at the lowest cost of any existing training program, and we urge the committee to continue funding this invaluable program.

#### **Increasing Effectiveness of Current Training Programs**

In these difficult budgetary times it is imperative that we make the best use of every available dollar. This is especially true in the area of training emergency responders. As the recession lingers at the local level, fire department budgets nationwide have incurred significant cuts, and money spent on training is often the first casualty of such cuts. As a result, we must assure that federal programs are not only effective but cost-efficient.

One limitation in current law that restricts our ability to maximize available resources is the requirement that we can only train instructors to deliver hazmat response training programs in their own communities. While this train-the-trainer model has many advantages, it also has inherent limitations. Most notably, trainers' effectiveness depends on the support they receive in their own communities. Many fire departments, struggling with budgetary cutbacks, are reluctant to schedule training, even with a fully qualified instructor already on staff. This is especially true for the higher level "hazardous materials technician" training, which is intended for those who serve on specialized hazmat teams.

While the IAFF provides a variety of fire fighter training courses, none is more in demand than our hazmat technician training. We have a backlog of requests from fire departments as big as Boston and as small as Palatka, Florida.

We therefore believe the IAFF's exemplary training program could be made even better by funding direct training for hazardous materials technicians. This would enable the IAFF to provide training that would greatly expand the number of highly proficient hazmat responders. Best of all, we believe we could expand our program to include

direct training of hazardous materials technicians within the current grant award. No additional funding would be necessary to add this component.

### **Providing Appropriate Training**

To maximize the effectiveness of its training resources, the Department of Transportation should ensure that responders receive the type of training that is most appropriate for their duties. Unfortunately, we believe that much of the training being provided to fire fighters is intended for a different audience. As a result, scarce resources are being used to provide training that is providing little or no benefit.

OSHA regulations identify five different training levels for workers who may be required to respond to hazmat incidents as part of their duties: Awareness Level, Operations Level, Hazardous Materials Technician, Hazardous Materials Specialist, and On-Scene Incident Commander. Each of these training levels has a unique curriculum.

Awareness Level training is for individuals, such as transportation workers *"who are likely to witness or discover a hazardous substance release"* in the course of their duties. Awareness level training teaches these workers to *"initiate an emergency response sequence by notifying the proper authorities"* which, in most cases, would be a fire department. Those who are trained at the Awareness Level *"would take no further action beyond notifying the authorities of the release."*

Operations Level training is intended for the first arriving public safety officer. This training is for workers *"who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release."* Such responders do not have specialized hazardous materials mitigation skills. Rather, *"their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures."*

Any fair reading of these straightforward regulations would conclude that Operations level training is the minimum level intended for fire fighters. Providing Awareness level training to fire fighters is not merely inadequate, it is completely off topic. There is little point in training fire fighters to learn when and how to call the fire department.

Unfortunately, that is exactly what many states are doing with funds provided by the Department of Transportation. State governments are using the perverse logic that because Awareness level training requires less hours than Operations Level, they can train more fire fighters with the available money. But training more people is pointless if the training is not giving them the skills they need to protect the public safety.

We therefore believe that Congress should require that all training delivered to fire fighters through the HMEP grant program should be at the operations level or greater.

### **Improving Hazardous Materials Identification Tools**

In addition to bolstering their emergency responder training programs, the Department of Transportation has an important role to play in making it easier for responders to identify hazardous materials. Accurate, timely information is key to any successful emergency response, and it is especially critical on a hazmat call. Without the ability to quickly and accurately identify hazardous cargo and numerous crucial details about such cargo, fire fighters may lack the information necessary for a safe and proper response.

Fire fighters currently rely on two simple but effective tools to identify hazardous materials during transportation: placards and shipping papers. These simple tools have generally proven successful in their ability to relay information to first responders because they are highly recognizable and easy to understand, two important criteria in the high-stress and chaotic scene of a hazardous materials incident. Despite their life-saving importance, placards and shipping papers also have serious limitations – they may be damaged, hidden or unreachable during an incident. A fire enveloping a tractor-trailer, for instance, may destroy physical shipping papers, and the smoke from the fire may obscure a placard from sight. And, although the information they provide is crucial, it is limited in its scope.

New technologies can help first responders better identify hazardous materials and better inform such individuals on how best to respond to an emergency involving such materials. Congress has repeatedly sought to improve emergency responder identification systems over the past two decades. In 1990, Congress directed the Department of Transportation to undertake a rulemaking to improve identification systems and funded a National Academy of Sciences study on the subject. In 1994, Congress directed the Department to fund pilot projects testing certain identification technologies. Despite these efforts, there have not been any significant improvements in hazardous cargo identification systems in more than thirty years.

One promising technological initiative is the establishment of an electronic freight management program. Providing access to continuously updated electronic shipping information will help emergency responders identify hazardous substances during a hazmat incident without putting personnel at risk. An electronic system also has the potential to enhance a department's response by providing details shipping papers might lack, such as comprehensive first aid information.

While such a system would unquestionably be beneficial to responders, there are obstacles that must be overcome before it could be fully deployed. The mobile electronic equipment necessary to receive such information at the scene of an incident may be prohibitively expensive for many fire departments. Additionally, spotty wireless reception may preclude many departments from receiving information at the scene of an incident, especially for incidents that occur in rural areas.



Despite these limitations, electronic freight management can provide another important tool in the fire fighter's arsenal when responding to a hazmat incident, and we urge the committee to support efforts to develop these information technologies.

We are also supportive of proposals to establish a commodity flow tracking system. Tracking and mapping commodity movements throughout the United States will provide responders with a more complete picture of threats facing particular communities, allowing state and local governments the opportunity to better protect their communities and plan for potential emergencies. For example, knowing that ammonia is regularly shipped through a community will allow the local fire department to ensure that its personnel are fully trained in how to respond to an ammonia release, how to treat injuries due to ammonia inhalation, and how to best protect the community and themselves in such a scenario. Such information will also help local departments pre-plan evacuation scenarios, stockpile needed equipment, and conduct exercises to ensure their responders are practiced in incidents involving ammonia.

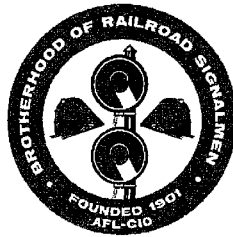
It is also important to ensure that incident commanders have ready access to e-shipping and commodity flow data. In the chaos of a hazmat incident, responders do not have the luxury of time. Whatever systems are developed must guarantee that incident commanders can access information on-demand, twenty-four hours a day, and that such information be accurate and up-to-date.

Even with the aid of these emerging technologies, placards and physical shipping papers will remain essential tools for fire fighters on the scene of a hazardous materials incident for the foreseeable future. In the world of hazardous materials incidents, redundancy and simplicity of information is not simply convenient, it can be life-saving. It is therefore crucial that new identification tools supplement, rather than replace, current requirements for placarding and physical shipping papers.

#### **Conclusion**

On behalf of the International Association of Fire Fighters, I appreciate the opportunity to share with you our views on ways to improve our nation's hazardous materials response capabilities. By improving emergency responder training and enhancing hazmat identification tools, fire fighters will be better able to guarantee that our nation's transportation network remains a safe and efficient mode for private travel and public commerce. To the extent that the IAFF can assist the Subcommittee in achieving this vision, I am happy to offer our expertise and pledge to work closely with you and your staffs.

Again, I'd like to thank the Subcommittee for the opportunity to testify today and am happy to answer any questions you may have.



**Statement of Leonard Parker  
National Legislative Director, Brotherhood of Railroad Signalmen**

**Before the House Subcommittee on Railroads, Pipelines and  
Hazardous Materials**

**Hearing on**

**Railroad and Hazardous Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens**

**April 7, 2011**

The Brotherhood of Railroad Signalmen is highly supportive of development of High Speed Passenger Rail, expansion of Inter-City Passenger Rail, and expansion of commuter rail service. This is a long time coming and we are pleased that the Congress and the Administration have recognized that rail is an under-utilized resource that can be used to provide safe, efficient, effective and environmentally sound passenger transportation. But, it is important to recognize that safe and effective passenger rail transportation depends on highly skilled, professional railroad workers, many of whom, especially Signalmen, are certified to perform various forms of railroad work.

**A. INTERCITY PASSENGER RAIL SERVICE AND HIGH SPEED RAIL WORK  
MUST BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

Railroad work involves unique skills and training and sometimes special certifications; this is certainly true if Signal work. Consequently railroad work on the major freight railroads, Amtrak and the major commuter lines is performed by railroad workers in the traditional crafts recognized by the NMB. Professional railroad employees have a proven record of accomplishment of successful work on joint-owned commuter rail systems. Furthermore, professional railroad employees were responsible for the operating, dispatching, construction, rehabilitation and upgrading of freight lines and signal systems used in commuter passenger service throughout the United States and especially in the Northeast. Railroad workers operate and maintain the major commuter rail systems -MBTA, MetroNorth, LIRR, NJ Transit, SEPTA, METRA.

For the same reasons, work on new High Speed Rail operations and expanded Inter City Passenger Rail operations should be done by railroad workers. Certainly the persons who do work for the highest speed passenger operations (whether train movements and control, track and signal work, equipment work or administrative work) should be no less skilled and no less qualified than the persons who do such work involved with the movement of things. The ability of entities that do work connected to High Speed Rail operations to hire qualified employees to perform that work will depend on those entities being rail carriers because rail workers will not accept jobs with entities that are not rail carriers since railroad workers who leave carrier employment lose substantial, vested Railroad Retirement benefits, and the rights and protections provided under other Federal Railroad laws.

There are some who want to enter the railroad industry and to perform work on railroad lines, but who seek their own economic advantage by attempting to perform railroad work without being "rail carriers" under the Federal railroad laws and by using workers who are do not have the rights and benefits mandated by the Federal railroad laws. This race to the bottom must be resisted.

While certain small commuter railroads have engaged in the "unbundling" of railroad work among multiple contractors who are not rail carriers, this unfortunate practice is not followed on any of the major freight railroads, major commuter railroads or Amtrak. All of those entities recognize that integrated railroad operations in a single carrier operator employing

railroad workers to perform traditional railroad work is the safest and most effective and efficient method of railroad operations. That same approach should be used for High Speed Rail and expanded Inter City Passenger Rail operations; the unbundled model should be rejected. Multiple non-rail carrier entities simply cannot provide the most skilled and fully certified rail workers. Additionally, safety is compromised in such a model. When one entity is responsible for overall operations it has a much greater incentive to operate as safely as possible and to get quickly to the cause of an accident when one occurs in order to prevent a recurrence. When multiple entities are involved in separate aspects of rail operations, there are incentives for each of them to focus only on its own responsibilities and to rely on someone else to do what is necessary in overlapping areas. And when there is an accident it is likely that the contractors responsible for train movements, the signal system, the track and the maintenance of the equipment will blame each other. That incentive is eliminated when one entity is responsible for the entire operation.

As the Federal government encourages and helps fund the promotion of High Speed and expansion of Inter City Passenger rail transportation, it should make sure that it is providing real rail transportation that employs real rail workers, not “knock-off” rail transportation that utilizes imitation rail workers. To the extent that Amtrak is used to provide new service, such service will be real rail service using real rail workers; but whoever provides the new service they must be rail carriers who employ workers covered by the Federal railroad laws. Talk of “privatizing” the Northeast Corridor or Intercity Passenger rail service ignores recent history. The current private freight railroads once provided passenger service too. Freight and passenger service were not separated, passenger service was part of the common carrier obligation. However, the freight railroads were dramatically losing money on the passenger service and could not continue to provide that service. Amtrak was created because the private sector could not provide passenger rail service; the freights were relieved of their common carrier obligations for passenger service in return for allowing Amtrak to operate on their lines. Intercity passenger service is provided by Amtrak not because the government sought to provide this service, but because the private sector was unable to do so.

The PRIIA requires that Federal High Speed Rail and Intercity Passenger Rail grants must be conditioned on requirements that operators on federally improved rail infrastructure will be rail carriers under the Interstate Commerce Act and all statutes that adopt that definition of rail carrier, including the Railway Labor Act, Railroad Retirement Act and Railroad Unemployment Insurance Act. A rail line, the right of way, the signal system and the shops necessary for maintenance of locomotives and rail cars are all components of rail infrastructure and work on and for those components must be performed by railroad workers. The PRIIA also provides that collective bargaining agreements applicable on a railroad whose right of way is being used will remain in full force and effect; and that the rights, privileges and benefits of railroad workers be preserved. This is a mandate that the employees who perform work related to High Speed Rail and Intercity Passenger Rail supported by Federal funds must be railroad workers covered by the RLA, RRRA, RUIA and FELA. This mandate should be continued.

**B. RAILROAD WORK, INCLUDING OPERATIONS AND INFRASTRUCTURE IMPROVEMENTS ON EXISTING RAILROAD LINES AND SIGNAL SYSTEMS AND**

**OTHER FACILITIES MUST BE PERFORMED CONSISTENT WITH EXISTING COLLECTIVE BARGAINING AGREEMENTS.**

Virtually all of the work and operations envisioned by various plans to expand intercity passenger rail work and for high speed rail service will be done on track, structures and/or rights-of-way, using signal systems and other facilities and structures of existing rail carriers-either freight railroads or Amtrak. Those carriers, and the track, rights of way, signal systems facilities and structures they own, are covered by collective bargaining agreements between the carriers and the various rail unions, including BRS, that provide covered employees with rights to perform work within the scope of those agreements, and that may regulate the use of contractors to perform such work. Congress and the Administration should ensure that long standing rail collective bargaining agreements are protected and that those who seek their own profit will not be able to do so by undercutting or undermining those agreements. Indeed, these are binding contracts between the railroads and rail unions that have been in effect for decades and they are entitled to due respect as intercity passenger rail service and high speed rail service is expanded. The freight railroads and Amtrak are statutorily obligated to comply with their agreements with the rail unions; federal funds should not be allowed to be used to facilitate evasion of those agreements and federal programs should not encourage others to negate or undermine those agreements.

**C. BUY AMERICAN REQUIREMENTS SHOULD BE CONTINUED**

The PRIIA states that DOT may not approve a grant for a High Speed Rail or Inter City Passenger Rail project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." This is an important requirement and a basic premise of federal funding for rail projects to create jobs for Americans. Strong Buy American requirements are essential to development of High Speed Rail and expansion of Inter City Passenger Rail.

**D. WHEN STATES, STATE AGENCIES AND OTHER STATE ENTITIES ACQUIRE RAILROAD LINES THAT WILL STILL BE USED FOR INTERSTATE RAIL TRANSPORTATION THOSE ACQUISITIONS SHOULD BE GOVERNED BY THE INTERSTATE COMMERCE COMMISSION TERMINATION ACT AND ALL WORK ON AND FOR THOSE LINES SHOULD BE DONE BY RAIL CARRIERS USING RAILROAD WORKERS**

The Interstate Commerce Commission Termination Act gives the Surface Transportation Board jurisdiction over transportation between states and within states "as part of the interstate rail network," by rail carriers, and over their "routes, services and facilities." 49 U.S.C. §10501 (a)(2) and (b)(1). The STB's jurisdiction includes "the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State." 49 U.S.C. §10501(b)(2). Its jurisdiction "is exclusive" and the remedies the ICA provides "with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." 49 U.S.C. §10501(b). While the ICA now exempts provision of

mass transportation service by local government authorities and their contractors from STB regulation, it does not exempt non-mass transportation activities from STB regulation, and certainly does not exempt state and local governments from STB jurisdiction over acquisitions of portions of the interstate rail system. Additionally the ICCTA expressly states (49 U.S.C. §10501(c)(3)) that the other railroad laws that use the ICA definitions still apply to local governments; so even with respect to mass transportation activities, a local government authority or its contractor is subject to the federal railroad laws applicable to railroad workers such as the RLA, FELA and Railroad Retirement.

The ICCTA expressly provides that a person that is not already a carrier may not construct or acquire a railroad line without STB approval (49 U.S.C. §10901(a)), and a rail carrier may abandon a rail line or discontinue service on a line only with STB approval. 49 U.S.C. §10903(a)(1). The Act defines “Railroad” as including the road used by a rail carrier as well as track, roadbed, bridges, switches, and spurs used or necessary for transportation; and “transportation” includes locomotives, cars and equipment “related to movement of passengers or property or both by rail”, as well as services related to that movement. Section 10102(6) and (9). Since “railroad” is defined as all of the physical assets that constitute a railroad, and since a railroad line is simply a portion of a railroad; if “railroad” is defined as including track, switches, spurs, and roadbed, a “railroad line” is necessarily comprised of track, switches, spurs, and roadbed. Accordingly, when any person (including a State entity) acquires a railroad line that is part of the interstate rail system that will continue to be used for interstate rail transportation, that acquisition may be accomplished only after STB approval under Section 10901, or pursuant to STB exemption from such approval (where the STB still has jurisdiction over the line and the transaction). Under Board rules, a State entity that acquires a railroad line and assumes responsibility for the line is a carrier, unless it contracts with a carrier or carriers for it or them to perform all railroad responsibilities. While Section 10502 of the Act allows the STB to exempt a transaction from prior Board approval (subject to a petition to revoke the exemption), the transaction and the acquiring entity are still subject to Board jurisdiction.

Despite the language of Section 10901, in recent years the STB has allowed acquisitions of railroad lines to go forward without Board approval or exemption under Section 10901. In these transactions states and other public authorities buy active rail lines from freight railroads but the freight railroads retain permanent, exclusive “operating easements” for freight operations on the lines. So these lines are still used by the freight railroads for interstate freight transportation, but the public entities begin commuter rail operations as intra-state operations with non-rail carrier operators, and non-rail carrier companies doing locomotive and equipment maintenance, dispatching and maintenance of the line and its signal systems, even though the line is still being used by the freight railroad (and sometimes Amtrak) for interstate rail transportation. Typically, the public entity brings in an independent contractor or contractors to perform the railroad work. In these arrangements, the operator and/or other contractors used to maintain the line and signal system used by the commuter operator and the freight railroad, and to maintain the commuter rail trains, are not carriers and their employees are not railroad employees; they are not covered by RLA, FELA or Railroad Retirement.

Under ICCTA, STB has no jurisdiction over a public entity owning/operating an intrastate line used only for intrastate transportation. But the STB has jurisdiction over transfer of a portion of a railroad that is within one state by is still used for interstate traffic. Section 10901. The STB has devised a process to negate its own jurisdiction and authority over pieces of the interstate rail system used for interstate rail transportation. Under this process, application for the transfer of the line is filed with STB under Section 10901, but dismissal is sought on basis that there is no real transaction since the selling freight carrier retains an "operating easement" for continued freight service over the line. STB then dismisses the application based on its decision in *State of Maine* 8 I.C.C.2d 835, 1991 WL 84430 (I.C.C.) and subsequent cases. A railroad line is then acquired by the State without STB approval or exemption, and the Board cannot regulate the State's use or maintenance of the line or its future disposition of the line. Additionally, public entities use Federal Transit Act funds to acquire and/or modify and upgrade the lines for commuter passenger operations, but freight employees are not covered by "13(c)" protections so the employees affected by the transfers have no protection at all, even though Federal funds are used to acquire and/or substantially upgrade the lines.

The *State of Maine* line of cases is based on made-up standard that States and State entities that acquire the physical assets of railroad lines are not actually acquiring railroad lines because they are not acquiring the freight service operating rights. There is no statutory support for this. States that acquire rail lines that are part of the interstate rail system and will continue to be used for interstate rail service require STB authorization or exemption for the acquisitions. Under Section 10901. This line of cases is predicated on a definition of "railroad line" that is at odds with the ICCTA. Since Railroad is defined in the Act as the physical assets of a railroad, and a "railroad line" is a portion of a railroad, it is contrary to the Act for someone to acquire the physical assets of "railroad line" without STB approval or exemption on the premise that there has been no acquisition of a railroad line, just acquisition of the physical assets of the railroad line.

These sorts of transactions are not only contrary to the Act, they raise a number of problems for the interstate rail system, for railroad workers and for safe and effective rail operations, such as:

1. What responsibility will the public owner have for line? What regulation and oversight will apply to the line? Who will the commuter rail operator be? Will it be a railroad? Will its employees be covered by railroad statutes?
2. What happens to employees? What rights do they have? They would want to follow their work, but there is no mechanism for them to do so. Also if the work goes to non-rail contractors then employees won't want to go because they will lose railroad retirement rights by severing their "present connection" with the industry. The employees will not have "13(c)" rights even if federal transit money is used because the DOT takes the position that freight workers are not transit workers so if they are affected by a line conveyance accomplished with transit money, the freight workers will not be protected

3. Contractors cannot hire qualified, professional, licensed/certified railroad employees. Safety suffers because line is not operated by skilled, professional railroad workers.

4. Other safety issues-Freight, Amtrak and commuter trains will run on same line, but who is ultimately responsible for line? What happens in the event of an incident or other safety problem-who is responsible and who has incentive to improve safety? The line is part of interstate operations, but ownership of line is not with a rail carrier and federal railroad statutes are not applicable. When a single carrier operator is responsible for train movements; maintenance of the track, right of way and signal system, and maintenance of the locomotives and rail carriers, it has a powerful incentive to maintain safe, efficient and quality operations because all responsibility ultimately runs to that carrier. But under the model where there is one contractor for train movements, another for maintenance of way, one for signal work, another for maintenance of locomotives and cars, one for railroad clerical work, and another for dispatching, there are real incentives for each to minimize its responsibility and leave concerns to the other contractors. In the event of an accident, one can easily imagine the operator whose engineer was driving the train blaming the signal contractor, or the maintenance of equipment operator who inspected the air brakes; or one or more of them blaming the maintenance of way contractor for poor track maintenance, or all of them might pointing their fingers at each other. Instead of determining what went wrong to prevent a recurrence, there will be a blame-game and years of litigation.

5. What is the long term impact on Railroad Retirement system? As employees are pulled out of the system, as "railroads" are being run without railroad workers, there will be lesser contributions to the RR Retirement fund.

6. Federal monies are being used to deprive railroad employees of rights and benefits

7. Balkanization of rail system-After World War I, the ICA was amended and the ICC was given more powers because the war made it apparent that the country had a patchwork rail system; existing patterns of ownership, connections and responsibility were not conducive to an effective and efficient national system. When entities that own right of way and trackage in the middle of the interstate rail system are not carriers, when the STB has no authority over the entities that own track used in heavy interstate freight and intercity passenger movements, when a state agency that owns a line of railroad could walk away from the line with the STB powerless to act, there is danger to our rail system. Our rails system suffers when rail lines cease to be owned by responsible carriers subject to STB oversight and regulation, and where interstate passenger rail operations become a mere hodgepodge of unrelated entities who do not care about a unified whole.

However, the STB has reaffirmed the reasoning of *State of Maine* line of cases noting that the rule is of longstanding (over 60 decisions-all of which were *ex parte*, none of which actually adjudicated the issue of STB jurisdiction), and because the policy expressed in those cases was deemed to encourage development of commuter rail systems (without regard for the



many problems with this approach just outlined). Regardless of whether Board's reasoning is good policy, it is contrary to the language of the Act. However, the Court of Appeals for the D.C. Circuit recently affirmed the Board's approach, concluding that "railroad line" is not defined in the Act (though "railroad" is), that there was substantial body of Board decisions applying this approach (albeit *ex parte* decisions) and the Board is due deference in its interpretation of the statute. These decisions make it all the more necessary that the legislation be enacted to ensure that the STB will continue to have jurisdiction over lines of railroad that are used for interstate rail transportation, that such lines are not conveyed without STB approval or exemption from approval under Section 10901, and that the railroad work on such railroad lines will be performed by rail carriers using railroad workers covered by the Federal railroad laws.

#### **E. CONCLUSION**

The Brotherhood of Railroad Signalmen and all of its members look forward to development of high speed rail, and expansion of intercity passenger rail and commuter rail service. And we believe that the federal government should support development of each form of passenger rail transportation. But the railroad work must be done by rail carriers using railroad workers covered by the federal railroad laws, work on existing railroad lines and signal systems and other facilities must be performed consistent with existing collective bargaining agreements, buy American requirements should be continued and state and state agency acquisitions of railroad lines that will still be used for interstate rail transportation should be governed by the interstate commerce commission termination act with all work on and for those lines done by rail carriers using railroad workers.

**TESTIMONY OF  
SCOTT N. PAUL  
EXECUTIVE DIRECTOR  
ALLIANCE FOR AMERICAN MANUFACTURING  
BEFORE THE  
SUBCOMMITTEE ON RAILROADS, PIPELINES & HAZARDOUS MATERIALS  
U.S. HOUSE COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES  
HEARING ON  
RAILROAD AND HAZARDOUS MATERIALS TRANSPORTATION PROGRAMS:  
REFORMS AND IMPROVEMENTS TO REDUCE REGULATORY BURDENS  
APRIL 7, 2011**

Mr. Chairman and members of the Subcommittee, I want to thank you for inviting me to testify on behalf of the Alliance for American Manufacturing at today's hearing entitled "Railroad and Hazardous Materials Transportation Programs: Reforms and Improvements to Reduce Regulatory Burdens."

First, I would like to introduce the Alliance for American Manufacturing (AAM) to you. We are a partnership formed in 2007 by some of America's leading manufacturers and America's largest industrial union – the United Steelworkers – to work in a cooperative, nonpartisan way for one goal: strengthening American manufacturing and therefore our nation's economic and national security. Our mission is to provide policymakers like you with useful analysis of the issues, as well as innovative policy ideas to move us toward effective solutions.

I will focus my remarks today on the positive outcomes that result when "Buy America" laws are utilized to promote the use of American-made products in our nation's federally-funded infrastructure investments.

While other nations speed ahead to update their infrastructure – supporting job creation and a more competitive economy – the United States is falling behind, investing just 40 percent of the level needed to keep up, according to several Congressionally-appointed commissions. Investing in our infrastructure both directly and indirectly supports a host of job creating sectors, including manufacturing, services, agriculture, trucking, and tourism. In addition, the President’s goal of doubling exports over five years depends on a strong and stable infrastructure network.

Sustained investment in our national infrastructure system through public investment and other creative mechanisms to attract private investment – such as a national infrastructure bank, loan guarantee programs, and direct loans programs – is essential to the development of a robust manufacturing supply chain and, in turn, creating good jobs for American workers. As part of this effort, we must make every effort to ensure that American-made iron, steel, and other manufactured goods are used in the construction of our roads, bridges, highways, railways, sewer systems, schools, clean energy projects, and other infrastructure.

This is not a new concept. For nearly 80 years, the United States has had domestic sourcing – or “Buy America” – laws on the books. To support our national security capabilities, Buy America laws were expanded in the 1940s to apply to defense spending; and in the early 1980s, President Ronald Reagan signed into law an expansion of Buy America for highway and transit projects that are funded by federal grants.

In a nod to the benefits of domestic sourcing, federal policymakers have applied Buy America provisions to AMTRAK and to the High-Speed Rail, Intercity Rail Passenger programs. A “Buy

America” provision was first applied to Amtrak when the *Rail Passenger Service Act* was passed by Congress in 1978. And when Congress passed the *Amtrak Reorganization Act of 1979* it reiterated its desire to reinvest U.S. taxpayer dollars in U.S. taxpayer jobs noting in the conference report that “[i]t was the conference committee’s strong belief that Amtrak equipment purchased with U.S. tax revenues should continue to be returned to the U.S. economy by *strongly favoring* American suppliers and U.S. labor.”

That U.S. taxpayer dollars should be reinvested in the U.S. economy is a view echoed by today’s policymakers. The Federal Railroad Administration recently observed relative to the High Speed Rail Intercity Rail (HSRIPR) program’s Buy American requirements that “encouraging grantees to use manufacturers or suppliers who maximize domestic content,” will help it “achieve its goal of 100% domestic content in the near future.”

Indeed, it is important that as we seek to improve our economy we focus our attention to manufacturing job creation. Buy American policies are effective tools to stimulate a nascent industry and create jobs. As applied to rail, observers point to their successes. For instance, a recent report by the Duke University Center for Globalization observes, “[d]omestic content requirements have helped develop a robust U.S. component supply chain and give vital opportunities to U.S. firms.”

Over the long term, sustained federal investment in our crumbling infrastructure network, coupled with strong Buy America laws, presents an opportunity to expand supply chains and create desperately-needed manufacturing jobs in the U.S. For every \$1 billion in new infrastructure spending, we create anywhere from 18,000 to over 30,000 new jobs. When the use

of U.S.-made materials is maximized with Buy America laws, manufacturing employment gains from infrastructure investment increase by up to 33 percent.

To realize the job creating and economy expanding potential of the Buy America preferences in our infrastructure laws, it is important that the preference apply to all manner of federal-aid infrastructure programs in a way that maximizes domestic content. As stated in 2010 Northeastern University study, “full domestic sourcing would dramatically increase employment.”

In the context of passenger and freight rail, this means that the Buy America provision should be applied across programs in a manner that maximizes U.S.-produced content. This will create more jobs, expand economic opportunity for U.S. businesses, and enable businesses to better manage their supply chains. The domestic content requirement currently applied to the HSRIPR program should be applied to all federal-aid programs for rail infrastructure. For instance, the domestic content Buy American provision should extend to the Railroad Rehabilitation & Improvement Financing (RRIF) program, to require a preference for U.S taxpayer produced goods, in return for the \$35 billion in taxpayer dollars authorized to the RRIF program for direct loans and loan guarantees to finance the development of railroad infrastructure.

To anyone who questions the effectiveness of our Buy America laws, perhaps suggesting that they are not achievable, desirable or realistic or that the U.S. does not currently have sufficient capacity to meet a particular domestic content threshold, I would respond by reminding them that domestic content provisions merely create a preference, not a mandate or a requirement, for American-made goods when they are available and competitively priced.

To alleviate any short-term market limitations, our Buy America laws have been carefully crafted to provide common-sense waiver flexibility in instances when excessive cost or limited product availability would be an impediment in the completion of a project.

To improve the effectiveness of the waiver process, AAM urges the subcommittee to review ways to increase and streamline transparency when waivers are requested and issued. Some, but not all, government agencies make waiver requests available to the public for 15 days before approving the purchase of goods manufactured abroad. AAM supports efforts to streamline such transparency provisions so that they apply to all government agencies overseeing procurement and relevant programs to incentivize private investment. Doing so would help to reduce lost opportunities for American companies and their workers to provide the needed goods.

After publishing a Buy America waiver request in October 2010 for a road project on State Route 60 in Allegheny County, Pennsylvania, the Federal Highway Administration (FHWA) received feedback during its comment period that the steel pipe in question could, in fact, be produced domestically. After verifying with Pennsylvania transportation authorities (PennDOT), FHWA rescinded the waiver. In this case, waiver transparency led to American workers manufacturing this product at a comparable cost instead of importing steel pipe from a foreign factory.

What waiver transparency tells us is that the U.S. has a significant supply chain already in place to support infrastructure investment in passenger rail; and more than 30 foreign and domestic rail

manufacturers and suppliers have committed to locating or expanding their base of operations in the U.S. if they get the chance to work on our high speed rail program. In fact, the recent study released by the Duke University found that it is “largely thanks to Buy America that the domestic supply chain is already quite well developed.” For instance:

- Siemens is manufacturing train cars and other equipment in Sacramento, CA.
- CAF is manufacturing train cars and other equipment in Elmira, NY.
- Caterpillar/EMD is building a locomotive assembly plant in Indiana.
- Steel Dynamics, Inc. is expanding a steel manufacturing plant in Columbia City, IN.

Funding in the *Recovery Act* is helping to develop downtown transit systems in Portland, OR, and Tucson, AZ. To support the new demand for streetcars, Oregon Iron Works is building the first modern streetcars in the U.S. in over 60 years because of Buy America laws, and they are doing it with American-made parts:

- Miles Fiberglass in Oregon manufactures front and rear shell pieces for the streetcars;
- Penn Machine Co. of Johnstown, Pennsylvania, manufactures wheel sets with gear boxes;
- Recaro of Auburn Hills, Michigan, manufactures seats; and
- Milwaukee Composites supplies flooring materials.

While some critics of domestic preferences contend that other countries might retaliate by restricting U.S. imports, “in fact,” a recent Northeastern University report on the U.S. rail industry states, “many of the same countries that object to U.S. domestic content are far more strategic in developing their own industries.” If the U.S. is to compete internationally, then it must adopt

more strategic, trade-compliant policies that foster and don't disadvantage U.S. manufacturing. To be clear, our Buy America laws are 100% compliant with our international trade obligations.

Public support for Buy America laws could not be stronger: 89 percent of midterm election voters said they support policies to ensure that their tax dollars are used to buy American-made materials (91% among Democratic voters; 87% among Tea Party supporters). Thus, it is no surprise that over 500 state and local governments have passed Buy America resolutions of their own as they seek to direct spending towards job creation in their region.

Mr. Chairman, I will conclude by providing some important background on the state of American manufacturing. According to AAM polling conducted in 2010, midterm election voters said that manufacturing was the most important sector for the overall strength of our economy and for our national security – ranking ahead of finance, services, healthcare and other key sectors. The reason is simple: manufacturing is the backbone of our economy, spurring job creation and innovation.

- *More R&D.* American manufacturers are responsible for 70% of the research and development performed by industry in the United States.
- *Patents.* Roughly 90% of all patents filed come from the manufacturing sector.
- *Technology.* American manufacturers are the leading buyers of new technology in the United States.
- *More Jobs.* American manufacturing directly employs 11.7 million Americans and directly supports millions of additional jobs in other sectors.



- *More Growth.* American manufacturing has a higher multiplier effect than other sectors, supporting four to five jobs indirectly. Manufacturing jobs also pays better wages – 22 percent higher on average – than other sectors and are more likely offer better training.
- *Still significant.* Manufacturing is the largest sector of economy in a number of states and represents 13% of our Gross Domestic Product. By itself, U.S. manufacturing would be the 9<sup>th</sup> largest economy in the world.
- *Powers Exports.* Manufactured goods represent 60% of U.S. exports.
- *Productivity.* Manufacturing productivity exceeds rest of private sector by 60%.

While those are significant – and to many Americans surprising – achievements, the challenges that face manufacturing are even more shocking.

- Well over 5 million American manufacturing jobs have been eliminated since 2000; that represents one-third of all manufacturing jobs in this country.
- Over 50,000 manufacturing facilities have closed over last ten years.
- Industrial production dropped last decade – it had risen every decade before that, even during the Great Depression; and while the U.S. economy expanded 17% from 2002-2007, manufacturing expanded only 5%.
- The trade deficit in manufacturing goods has quadrupled since 1997. We already have growing high technology and green technology trade deficits.
- Our trade deficit with China alone has climbed steadily since it joined the World Trade Organization in 2001 – from \$83 billion in 2001 to a record \$273 billion in 2010.
- According to the Economic Policy Institute, 2.4 million American jobs were lost or displaced between 2001-2008 due to our massive and growing trade deficit with China.

As our manufacturing base continues to decline, our position as a world leader is put at risk.

- In a February 2011 Gallup poll, 52% of Americans said China is the leading economy, compared with 32% who chose the U.S. In 2009, those two countries were tied.
- According to IHS Global Insight, the U.S. has already lost its position as the world's largest manufacturing nation by output to China – a position held for 110 years.
- China surpassed Japan in 2010 to become the world's second-largest economy by GDP and could surpass the U.S. by as soon as 2020.
- China surpassed Germany to become the world's top exporting nation in 2009.
- China is poised to surpass the U.S. and Japan and become the world leader in patent activity in 2011.
- China is on track to overtake the United States in scientific output as early as 2013.
- China overtook the U.S. as the world's largest auto market in 2009.

Mr. Chairman, we look forward to working with you and members of the subcommittee to boost the effectiveness of our federal programs to create jobs through improvements to our railroad and hazardous materials transportation programs.

**Statement of**

**Mary L. Pileggi  
North American Logistics Manager  
DuPont**

**On behalf of the American Chemistry Council**

**before the**

**United States House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Railroads, Pipelines & Hazardous  
Materials**

**“Railroad and Hazardous Materials Transportation  
Programs: Reforms and Improvements to Reduce  
Regulatory Burdens”**

**April 7, 2011**

Thank you, Chairman Shuster and Ranking Member Brown. My name is Mary Pileggi and I am here to testify on behalf of the American Chemistry Council, a trade association representing America's leading chemical companies. I am the North American Logistics Manager for DuPont. I am responsible for all modes of materials transport in the United States and Canada, and I appreciate the opportunity to appear before this Subcommittee.

DuPont purchases approximately \$550 million in transportation in North America so you can understand why the topic of today's hearing is of great importance to DuPont as well as the other members of ACC.

I would like to start by underscoring the important role the products supplied by DuPont and all of ACC's members, including hazardous chemicals, serve in virtually every aspect of our lives.

The nation depends on chemical producers every day to form the building blocks and processes that are necessary for safe drinking water, life-saving medications and medical devices, a safe and plentiful food supply, energy-saving solar panels and much more.

Chemical producers rely on railroads and other modes of transportation to deliver chemicals wherever they are needed to get the job done – from water treatment plants to farms to factories.

Because some of these chemical shipments involve hazardous materials, we are constantly working with our transportation partners to find ways to build upon an already impressive safety record.

Through ACC's Responsible Care® initiative, ACC member companies and our Partners are committed to continuous safety improvement in every aspect of the transportation of our products. Collectively, we have invested billions of dollars in training, technology and tank car safety, and we will continue to do so in the future.

ACC and its member companies also have worked hard to establish a strong and successful partnership with the emergency response community. For example, ACC members, together with the railroads and other stakeholders, developed TRANSCAER®, a voluntary national training effort that helps communities prepare for and respond to possible hazardous material transportation incidents.

Emergency responders also have access to a wide variety of experts through ACC's CHEMTREC® program. When an incident takes place, responders contact CHEMTREC's state-of-the-art, 24/7 emergency center to determine the best way to handle a wide range of hazardous materials.

I want to personally invite the members of this Subcommittee and their staff to tour our CHEMTREC emergency center or attend a TRANSCAER event, to see how we work with local responders to help protect your communities.

We also understand that the Federal Government has and must continue to play a central role when it comes to ensuring the safe transportation of hazard materials.

With the Hazardous Transportation Materials Act (HTMA), Congress wisely established a comprehensive national regulatory system for hazardous materials transportation administered by the Department of Transportation (DOT). The goal of this system is not to prevent the movement of chemicals and other hazardous materials but to ensure they are delivered safely, securely and reliably.

HMTA has worked well in making the transportation of chemicals and other hazardous materials throughout the country safe for the public, workers and emergency responders.

We understand Congress will soon consider legislation to reauthorize HMTA. ACC and our members would like to go on record in strong support of this uniform national regulatory hazmat program, which ensures that training, transportation equipment, emergency preparedness, and all other aspects of hazmat distribution are consistent across the nation.

ACC is, however, concerned about one aspect of DOT's current administration of the regulatory program established under HMTA. "Special permits," which are issued under 49 U.S. Code Section 5117, allow safety-based variations from DOT's hazardous materials rules. Applicants for special permits come forward with proposals which can only be granted if DOT finds there to be at least an equivalent level of safety to what a rule provides.

Special permits are a win-win process: Industry gains flexibility with no loss of safety. DOT learns of new procedures and technologies that can later be incorporated into hazardous materials regulations on the basis of experience that has been monitored by the agency.

Unfortunately, DOT has recently imposed unnecessary paperwork barriers that have slowed the approval of special permits and increased costs to shippers, carriers, and the providers of hazardous materials packages. We urge the Subcommittee to strengthen the important special permits process by instructing DOT to rescind those overly complex and burdensome interpretations.

ACC and its members also support a sensible approach to the implementation of the Rail Safety Improvement Act that seeks to deploy new technologies like Positive Train Control (PTC). PTC and other risk mitigation measures have the potential for advancing safety and providing productivity benefits for not only the transportation of hazardous materials but also for the overall rail system.

While the goal of safety must be paramount, regulations must be implemented in a way that supports the President's Executive Order 13563, which calls for agencies to "identify and use the best, most innovative and least burdensome tools for achieving regulatory ends."

ACC understands that DOT, and possibly Congress, will reconsider important aspects of the current PTC rule and we support finding less burdensome means to achieve the safety objectives of the Act. As that effort moves forward, whether it is through regulation or legislation, any changes to the implementation of the PTC rule must remain consistent with the common carrier obligation, and allow chemical producers to ship products where our customers need them, now and into the future. It is also critically important to ensure that the costs of implementing PTC technologies are allocated fairly across the board as all parties will benefit from a safer national rail network.

The United States needs a safe and reliable system of hazardous material transportation governed by uniform national rules. That is the system we have today. The challenge, for both the private and public sectors, is to ensure all stakeholders work together to ensure this system continuously improves and remains competitive in the global markets that we serve.

We look forward to working closely with the Committee, the Congress and Department of Transportation to achieve this goal.

TESTIMONY

Before

The United States House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on

"Railroad and Hazardous Materials Transportation Programs:  
Reforms & Improvements to Reduce Regulatory Burdens"

Presented By

Gary Self  
Vice President & General Manager  
Nelson Brothers, Inc.  
Birmingham, AL

April 7, 2011

Chairman Shuster, Ranking Member Brown, and other members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, I greatly appreciate the opportunity to appear before you at this hearing. I am Gary Self, Vice President and General Manager, for Nelson Brothers, Inc. I have worked for Nelson Brothers since 1971 in many capacities, starting out as a truck driver.

Nelson Brothers is one of the Nation's largest manufacturers and distributors of Division 1.5 and 5.1 bulk emulsion blasting agents. From sites in AL, KY, OK, VA, WV, and WY, we supply customers in 26 states with over a billion pounds of these bulk materials annually by cargo tank and specialized, container straight trucks. Nelson Brothers has never had a fatality or a serious injury attributable to these hazardous materials in the 55 years that we have been in operation.

I have been asked to present testimony about our recent efforts to comply with requirements imposed on companies engaged in the bulk transport of emulsion blasting agents and related hazardous materials by the Pipeline and Hazardous Materials Transportation Administration (PHMSA) through the "Special Permits" program. It is a cautionary tale that resulted in near disastrous consequences for our company, and underscores the grave concern our company and the commercial explosives industry has with the agency's use of its special permit authority to mandate unproven and untested technologies on motor vehicles transporting explosives and blasting agents.

The safety and security of the materials we manufacture, distribute and transport is a company philosophy and paramount to our ability to survive as a company. We are closely regulated by a variety of governmental agencies, including PHMSA. Lapses in our regulatory responsibilities could compromise any aspect of our operations. For example, the specialized bulk trucks we operate are not configured to transport other types of freight. These vehicles would be idled without PHMSA's special permits. It is Nelson Brothers' rigorous attention to our compliance obligations that compels us to share our experience today as you contemplate reforms and improvements to reduce regulatory burdens of PHMSA's hazardous materials program.

#### Background

In the late 1970s, the explosives industry was swept by innovations promising safety and efficiency gains through bulk material transportation. Bulk transportation and the fitting of vehicles with specialized processing equipment allowed less sensitive, safer materials to be transported on highways to job sites where mixing and sensitizing of products would occur. Since bulk transportation of these less sensitive products was not provided for in the regulations, companies requested "special permits" to allow for this activity. Since that time, 95 percent of commercial explosives products are now transported in bulk. During this time, no death or serious injury has been attributed to incidents involving these bulk materials. While special permits are important regulatory tools PHMSA can use to allow the introduction of innovations that can provide equivalent or greater levels of safety, they do not come with the same cost/benefit protections that are afforded by notice and comment rulemaking. For



that reason, Congress never intended that special permits be long-term regulatory solutions for the activities they authorize.

Under the special permit program, PHMSA has power to modify permits with new conditions without the cost/benefit analysis that would be required for rulemaking. In August of 2009, PHMSA issued notices to holders of four of the eight special permits that authorize bulk explosives vehicles that it was modifying the conditions of the permits. Among the new conditions was one requiring battery disconnect switches. Between August and December 2009, the "battery disconnect" standard was rewritten three times. Despite the uncertainty, Nelson Brothers decided in January 2010 that it would begin the process of complying with 22<sup>nd</sup> revision of Special Permit 8554 issued December 30, 2009. The 22<sup>nd</sup> revision set a deadline for battery disconnect systems to be installed by January 1, 2011. We wanted to pursue a installation schedule that would be the least disruptive to our operations and customers.

After engaging in a global search, we were able to identify only one foreign-sourced supplier of a battery disconnect system that promised to meet the performance standards stated in the special permit. This system was designed for off-road mining equipment, but we were assured it could be adapted for use with our bulk explosives vehicle fleet. This high-end aftermarket battery disconnect system used a constant duty solenoid to disengage the alternator from the electrical system, ensuring engine shutdown per PHMSA's special permit requirements. Company engineers, OEM engineers and technicians, and disconnect manufacturers and technicians were involved in the initial installation. Testing was successfully completed in early March 2010, and the completed system was subsequently installed on three company vehicles that ran for two weeks without incident. Subsequently, all affected company vehicles were retrofitted with the disconnect system at a cost, including engineering, testing, installation, routine testing, and maintenance of approximately \$5000 per vehicle. Total company cost approached \$500,000.

#### Operating Experience and Malfunction

Event 1: Initial problems began in January of 2011 with excessive corrosion of and around the poles of the constant duty solenoid. Five failures were indicated with subsequent controlled shutdown of equipment or resulting non-starting failures. Replacement of solenoids and protection of both negative and positive poles appeared to address these problems. A program was put into place to protect all solenoid poles upon the next inspection.

Event 2: On January 27, 2011, a moisture buildup in a three pin control cable of the battery disconnect caused a failure of the battery disconnect with subsequent non-controlled shutdown of the truck. The vehicle, on a delivery run and on a public highway, was completely shutdown while traveling at speed. The driver was skillfully able to get the vehicle off the roadway without incident. A review of the incident indicated that, in addition to the manufacturer's recommended maintenance, extra or replacement dielectric grease was needed in the three pin connector to protect it from moisture. Again, a plan was put into place to add dielectric grease during the next inspection, according to vehicle schedule, for all trucks.

Event 3: Finally, on February 1, 2011, a company vehicle with this system installed experienced a system failure with uncontrolled shutdown. The failure was traced to a butt connector that connected the constant duty solenoid by a small wire used to disengage the alternator. The butt connector corroded and came loose. The vehicle was traveling at speed on a public highway. The driver was again able to get the truck from the roadway without incident.

Due to the risk posed to the public and to company personnel, a subsequent meeting of company personnel resulted in the decision to immediately disconnect the retrofitted system from all vehicles.

#### Conclusion

Nelson Brothers engaged in a good-faith effort to comply with PHMSA's battery disconnect standard in advance of the January 1, 2011 installation deadline. In December 2010, PHMSA again rewrote the standard and pushed the compliance date to July 1, 2011. In light of our experience and with installation questions still looming, Nelson Brothers, other affected companies, and vehicle and chassis manufacturers met with PHMSA on March 1, 2011. At this meeting, PHMSA engineers were unable to show how they would configure a disconnect system to comply with their own standard. PHMSA did say, however, that the agency was rewriting the four remaining bulk truck special permits with the same standards.

Nelson Brothers respectfully submits that the type of sophisticated shutdown systems envisioned by PHMSA in the modified special permits are currently not sufficiently advanced to be safely and reliably used with today's highly complicated vehicular mechanical and electrical systems. Furthermore, we also submit that to go forward with a remote or self-actuated, or multiple battery disconnect requirement without major research would be placing the public at grave risk of harm.

We have learned over the years to pay attention to close calls or near misses. These "lessons learned" are not ignored by the commercial explosives industry. Perhaps no other factor is more responsible in the last century for reducing the frequency of fatal accidents from explosives by a hundred times while consumption of explosives has increased tenfold. These warning signs should not be ignored by PHMSA, or Congress. Rather than continue the rewriting of the eight affected special permits to impose unproven technology, PHMSA should be focused on incorporating into the regulations current industry standards that have demonstrated, over decades, the safe operation of bulk explosives trucks.

We would be grateful to the members of the Subcommittee for your intervention to direct PHMSA to refrain from its demands to retrofit vehicles carrying explosives with untested technology in light of the industry's stellar safety record.

Thank you.



STATEMENT OF  
THOMAS D. SIMPSON  
PRESIDENT  
RAILWAY SUPPLY INSTITUTE, INC.

BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON RAILROADS

HEARING ON  
RAILROAD AND HAZARDOUS MATERIALS TRANSPORTATION PROGRAMS:  
REFORMS AND IMPROVEMENTS TO REDUCE REGULATORY BURDENS  
THURSDAY, APRIL 7, 2011

Good morning, Mr. Chairman and distinguished Members of the Subcommittee. Thank you for this opportunity to testify and provide this committee with our suggestions on reforms and improvements to reduce regulatory burdens as part of the reauthorization of our nation's surface transportation programs. My name is Tom Simpson, and I am the President of the Railway Supply Institute (RSI). It is a privilege to appear before you today on behalf of our 250 members.

RSI is a national trade association representing the companies involved in the manufacture of products and services in the freight car, locomotive, maintenance-of-way, communications and signaling, and passenger rail industries. Since its founding in 1908, RSI and its predecessor organizations have delivered comprehensive marketing, government relations, business development, and standards and technology services to its membership and advocated exclusively on behalf of supplier interests in multiple industry coalitions, legislative bodies and regulatory organizations.

RSI continually advocates safe, sensible and efficient solutions that work for rail, rail suppliers, and the people who depend on them. RSI serves as the supplier industry voice and works tirelessly in Washington, DC to represent its membership and to promote the primary interests of the industry.

The economic downturn has hit the railway supply industry hard. While railroads maintained their investment in capital projects through the downturn benefiting our members who provide communication and signaling technologies and maintenance of way products, the economic downturn severely hit the new freight car and locomotive building industries. The component suppliers to these industries – companies that provide wheels, axles, brakes and other freight car and locomotive parts were hit especially hard. This segment of the industry is

enjoying a modest, yet tenuous rebound. Recent federal investment in Amtrak and high speed rail has provided a spark to passenger rail suppliers.

Decisions made during the debate of reauthorizing The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU) will have a profound impact on the rail supply industry.

#### **GRADE CROSSING SAFETY - SECTION 130 GRADE CROSSING PROGRAM**

Since 1973 Congress has provided dedicated funding for states through the Section 130 highway-rail grade crossing safety program to implement safety improvements projects at grade crossings. Such improvements include flashing lights, gates or other warning devices and even upgraded surfacing material. Combined with Operation Lifesaver's safety message of "look, listen and live" at highway rail grade crossings, fatalities and injuries have been reduced dramatically. The Section 130 program has provided funds allowing states, localities and railroads to implement this simple strategy: close unnecessary crossings, upgrade the remaining crossings with the most modern warning devices available and, with Operation Lifesaver, educate the public on the dangers at these unique intersections.

With rail freight traffic beginning to rebound, the promise of more and faster passenger trains in the next few years and increased highway traffic, now is not the time to turn our back on this program. We believe that, given the alternative, states will use federal safety funds on other projects and not on grade crossing projects. RSI often meets with states to discuss Section 130 issues and we have found that states do use this modestly funded program. They often suggest that they could use even more money if Congress would provide it to them.

RSI supports H.R. 825, the Surface Transportation Safety Act of 2011 which, among other safety initiatives, would help preserve the Section 130 program in the next surface transportation bill at \$220 million per fiscal year.

#### **OPERATION LIFESAVER**

When the National Safety Council stopped its support of a national operation lifesaver program in the mid 1980s, RSI, Amtrak and the Association of American Railroads stepped in and created Operation Lifesaver, Inc. (OLI) to oversee the nationwide volunteer education organization. Recognizing the importance of a coordinated nationwide safety message, Congress, beginning in 1988, provided an annual \$250,000 set aside for OLI through the Surface Transportation and Uniform Relocation Assistance Act of 1987. Congress has continued to fund OLI and increased the set aside to \$500,000 per year in the late 1990s.

OLI has developed into a prototypical public private partnership as railroads and others in private industry provide volunteers and additional funding for OLI's programs. I am pleased that members of my organization have provided over \$250,000 in donations to OLI over the years and have allowed employees to spend thousands of hours volunteering for this worthwhile organization. The U.S. OLI program has provided encouragement and a model for other countries to use. Indeed OLI is recognized worldwide for the successful program it is.

Funding for this important program should not be eliminated nor should OLI have to compete with others in the uncertainty of the appropriations process. This nationwide highway – rail crossing education and safety program should continue to receive federal funding at the modest level of \$500,000 per year.

**PASSENGER RAIL FUNDING AND BUY AMERICA**

The United States has underinvested in intercity passenger service since the 1950s. A once vibrant intercity passenger rail supply community virtually disappeared in the 1970s. Uneven investment in Amtrak over the last 40 years has not allowed for a strong intercity passenger supply industry to reemerge. However, what has survived has been supported by Buy America regulations requiring that a portion of federally funded purchases have 50 percent domestic content. Recent recognition by the federal government and states that passenger rail is a viable transportation alternative has led to increased funding providing some optimism that the passenger supply sector is poised for growth. The administration's strong support of high speed rail has increased that optimism.

One reason highways and transit have continued to prosper is that these modes enjoy a dedicated source of funding – missing in intercity passenger rail. RSI realizes that funding passenger rail is problematic. We would like to work with the committee to develop a dedicated, multi-year passenger rail funding proposal that will work.

We have been strong supporters of Buy America regulations and believe they have promoted the development of a passenger rail car building industry in this country, but separate programs for high speed, intercity passenger rail and transit are confusing. We believe Buy America could be improved by implementing the following recommendations:

- Clarification of Buy America standards by streamlining the particular differences among provisions specific to Buy American, Federal Transit Administration, Federal Railroad Administration and under the American Recovery and Reinvestment Act.
- Improve transparency and accountability of domestic content requirements and introduce incentives to increase domestic content.

- DOT's National Rail Plan should support development of a renewed U.S. passenger rail equipment manufacturing industry through a vision of sustained equipment purchases and equipment lifecycle policies that avoid "boom or bust" procurement cycles.

#### **TRUCK SIZES AND WEIGHTS**

While others can debate the safety and pavement damage that heavier trucks bring to our highways, freight diversion of traffic from our nation's railroads to trucks will adversely affect railway suppliers. With freight diversion comes less demand for freight cars. RSI has 11 companies that own and provide for lease more than 700,000 freight cars – over half the freight car fleet. Many of these cars are directly competitive with long haul trucks traffic that may be lost if heavier trucks are allowed. RSI also has six companies that build new railroad freight cars. As noted earlier, they and their component suppliers were hit hard during the recent economic downturn as plants were shut down and employees were laid off. They are beginning to enjoy a modest recovery but are wary of the future. Our country needs a strong domestic freight car building industry and traffic lost to bigger trucks would especially hit freight car manufacturers hard. Now is not the time to raise truck sizes and weights.

Thank you again for this opportunity to testify on behalf of the Railway Supply Institute. We look forward to working with this subcommittee to help establish more balance in the nation's transportation system and address the critical needs of the freight and passenger railroad industry and its suppliers.



**Railroad and Hazardous Materials Transportation Programs  
Reforms and Improvements to Reduce Regulatory Burdens  
Hearing of the House Subcommittee on  
Railroads, Pipelines and Hazardous Materials**

**Statement of Helen M. Sramek  
President  
Operation Lifesaver, Inc.**

**April 7, 2011  
Washington, D.C.**

Mr. Chairman:

Thank you and members of the subcommittee for including Operation Lifesaver in today's hearing to discuss our rail safety education program. My name is Helen Sramek, and I have been President of this organization for the past four years.

Mr. Chairman, Operation Lifesaver exists because of a startling fact -- about every three hours in the United States, a person or a vehicle is hit by a train. We are the only nationwide public safety organization whose sole mission is to save lives and reduce injuries at highway-rail crossings and on or around railroad property. We do this by developing training and safety education materials and certifying volunteer presenters who deliver free presentations on how to make safe decisions near train tracks in communities around the country.

As I will explain later in my statement, this program began and remains grassroots-driven. There are independent Operation Lifesaver programs in all 50 states. They are managed by OL coordinators in each state --- dedicated men and women who are trained to work with volunteers, partner with state and local officials, and represent OL with the news media. These state programs are members of the national Operation Lifesaver organization, which oversees development of the public awareness and education materials that are used by state programs.

**Legislative Recommendation and Justification**

- We urge Congress to retain the set-aside from the highway trust fund for Operation Lifesaver that is included in SAFETEA-LU, and earlier versions of the surface transportation legislation. These funds (less than \$500,000 annually in recent years) are provided to Operation Lifesaver to carry out public information and education programs in all 50 states to help prevent and reduce motor vehicle collisions, fatalities and injuries at highway-rail crossings and on or around railroad tracks.

*Justification:*

- A modest investment of federal tax dollars to Operation Lifesaver has helped contribute to continued improvement in crossing safety. In the past 10 years alone, we have seen a drop of 38% in crossing collisions, 38% in crossing-related fatalities, and 30% in injuries. These gains have resulted from improvements at crossings, elimination of highway-rail grade crossings, targeted enforcement efforts, and public safety education programs, including the sustained efforts of Operation Lifesaver. By embracing the model of the 3 E's of traffic safety - education, enforcement, and engineering - Operation Lifesaver's singular focus on public education at highway-rail crossings has contributed to these safety gains.
- Operation Lifesaver develops community and state-wide projects that match a modest investment of federal dollars with private contributions or in-kind support for our safety activities. Safety is a shared responsibility of the public and private sectors.
- A collision between a train and vehicle is likely to be devastating, resulting in loss of life or catastrophic injury. These collisions can tie up crossings for hours, wreaking havoc in communities and impeding the flow of commerce. Such collisions almost always draw substantial media coverage.
- There's more than intrinsic value in lives saved or fewer injuries resulting from crashes. Society loses; communities suffer; the flow of commerce is disrupted; insurance rates go up.
- Freight traffic is increasing as the economy improves; more passenger, commuter and light rail systems are coming on-line, exposing the public to more risk if they are unaware of the dangers that accompany increased train traffic.
- Today's trains are quieter than most people think; are traveling at higher speeds than many believe; and can come from either direction. Absent education, the public is at a serious disadvantage.
- An impatient, risk-taking public that is increasingly distracted with all kinds of mobile devices is more vulnerable around trains.
- This program, nationally and within the states, generates considerable goodwill as it is the consistent voice with one specific, narrowly defined mission: saving lives and reducing injuries at highway-rail crossings and on or around railroad property.
- Absent the federal investment, crossing safety measures may continue, but lack focus, consistency in message delivery, and loss of in-kind support offered by volunteers, state and local governments, and safety related non-profit organizations.

**History of Operation Lifesaver**

Operation Lifesaver is a national public non-profit education and awareness program dedicated to eliminating the tragic - and largely preventable - fatalities and injuries at America's highway-rail grade crossings and along railroad rights-of-way. Because of its success and visibility, OL programs have sprung up in other countries, including Canada, Mexico, Argentina, Estonia, Finland, and the United Kingdom. It is likely that Israel will create a similar type education program within the next year. Today Operation Lifesaver is an international organization centered on the importance of public rail safety education to save lives.

Next year marks the 40<sup>th</sup> anniversary of the organization. It all began in Idaho in 1972 when there were over 12,000 collisions annually between vehicles and trains, tragically resulting in 1200 crossing fatalities. The state of Idaho started Operation Lifesaver as a six-week public awareness educational campaign to promote highway-rail grade crossing safety. Idaho's crossing-related fatalities fell that year by 43%. Inspired by Idaho's success, the program quickly expanded to other states – a true grassroots movement, driven largely by volunteers who share a passion for preventing deaths and injuries around railroad tracks.

In 1986 a national, non-profit education organization was created and is now based in Alexandria, Virginia. Along with private funding, OLI receives federal grants from the Federal Highway Administration, the Federal Railroad Administration and the Federal Transit Administration. Thanks to the efforts of this subcommittee, Operation Lifesaver's programs are included in the Rail Safety Improvement Act. In 2002, Operation Lifesaver began working with transit agencies to assist with their public education outreach efforts. Based on 2010 preliminary statistics collected by the Federal Railroad Administration, crossing collisions have fallen to just over 2000, resulting in 260 deaths and 810 injuries. While we saw a small uptick in crossing collisions in 2010, the highway-rail incident rate has dropped from 4.55 to 2.85 per million train-miles in the past decade.

#### **The key to Operation Lifesaver's Success**

Our passionate volunteers are one of OLI's greatest strengths. We have 1800 active presenters working on behalf of Operation Lifesaver today. If you have a moment to check our website, [www.oli.org](http://www.oli.org) you will find the story of one: Robin Potter of Fresno, California. She lost her 15-year-old son, Shawn, a few years ago because he was playing chicken with a train. "Shawn lost his life because he thought he could outrun a train," says Robin, who is now a certified Operation Lifesaver presenter. She volunteers with Operation Lifesaver so that other mothers won't have to experience a similar tragedy. You can also see the story of the often-forgotten victim: the engineer or conductor on the train who witnesses a tragedy unfold before their eyes.

These are some of the faces of Operation Lifesaver – the people who dedicate their time and energies toward educating the public to the dangers that are present on or around railroad tracks. Many of these volunteers agree to become certified presenters, trained to go into our schools and other community venues offering free safety presentations. Along with our state coordinators, they reach out to law enforcement officers, school bus operators, driver's education programs, commercial drivers, emergency responders, and others. They attend presenter classes to master the material and techniques for reaching different audiences. They must stay current on the material in order to retain their certification status. Other volunteers manage booths and exhibits at community health and safety fairs. They are linked by bonds of a safety community dedicated to one mission: saving lives.

OLI's national support center assists our state-based programs by providing the latest in education information and techniques to keep our message current and relevant to today's audiences. OLI serves as the national voice on highway-rail safety issues, implements national public awareness campaigns, develops and coordinates distribution of public service announcements, videos and literature. OLI challenges the advertising community and photographers who naively or foolishly choose to use images of dangerous activity around railroad property to sell their products.

#### **Challenges**

- In difficult economic periods, small programs like Operation Lifesaver cannot help but be concerned when budget cuts dominate the public discussion. As stated earlier, working with our safety partners, Operation Lifesaver's efforts have contributed to a substantial reduction in

vehicle-train collisions, fatalities and injuries. Other safety issues may come to the forefront, and absent sufficient dollars, policymakers could reorder priorities. The focus on rail safety education must prevail, particularly as more freight and passenger rail is expected.

- We continue to notice a disturbing increase in the number of collisions, fatalities and injuries occurring when people choose to walk or play on or near railroad tracks. Needless to say, Operation Lifesaver continues to expand its awareness and education programs in the area of pedestrian safety. Our work carries more urgency because many people do not realize or ignore the fact that walking on tracks is trespassing on private property, and is illegal and a potentially deadly activity.
- Operation Lifesaver also faces the challenge of developing and implementing our programs to reach audiences for whom English is a second language. Many of our materials are produced in Spanish, with other languages like Chinese, Hmong, Vietnamese and Somali also being used in some communities around the country.
- We are now aggressively expanding our capabilities to utilize new technologies to reach new and younger audiences. Last November we unveiled our new website designed to meet the needs of existing users while making it more appealing to younger, tech-savvy users. We use Facebook, Twitter, and YouTube to reach new audiences every day.
- In June, we will unveil an e-Learning program for professional drivers that will take OL-training to the next level, with the potential to reach millions of truck drivers through the Internet. We chose professional drivers for the first e-Learning program because tractor-trailers and other large trucks represent more than 25% of all vehicle-train incidents annually. The new e-Learning program will provide relevant, engaging and behavior-changing learning experiences that the professional driver can apply on the job. This Internet-based tool creates a simulated environment that exposes the driver to worst case scenarios requiring quick thinking and critical decision-making that could make the difference between life or death.

#### Conclusion

I conclude by thanking members of the subcommittee for taking their time to review a very small, but effective program that has enjoyed congressional support for almost 30 years. Your predecessors made a wise decision by investing in a safety organization that succeeds in part because of our "boots on the ground" capabilities with state program leaders and volunteers. By allowing creation of a National Office, Congress understood the need to have an overarching, consistent safety mission that can be shared with the public in many different ways.

We understand that Congress must scrutinize every single dollar that is appropriated in the interests of reducing the nation's deficit. As you approach that difficult task, the words of the chairwoman of the National Transportation Safety Board can serve as a guide. Not long ago, she was quoted as follows: "Safety is not discretionary. Safety deferred is safety denied.... We can pay now, or we can pay later."

Thank you.



**Statement of James Stem  
National Legislative Director, United Transportation Union  
Before the House Subcommittee on Railroads, Pipelines and  
Hazardous Materials**

**Hearing on  
Railroad and Hazardous Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens**

**April 7, 2011**

Good Morning Mr. Chairman and Thank you for the opportunity to present the viewpoint and the concerns of the 70,000 men and women that are working as we speak this morning operating the trains moving on our nation's railroads.

The most important point that we will make today is that the current regulatory process in place within the U. S. Department of Transportation is working very well for our nation's railroads and other partners in the industry and our country. In these times of economic strife our nation's freight railroads are enjoying record profitability and record productivity. We urge this Committee to keep in mind that the laws and regulations that are in place today have not hampered the ability of our nation's railroads to prosper significantly during the current economic downturn, but the operational safety guidelines have actually contributed to that success.

The key to this regulatory success is a consensus based negotiated rulemaking process called the Rail Safety Advisory Committee (RSAC). RSAC has top level representation from Class One railroads, passenger and commuter railroads, Short Line railroads, the National Transportation Safety Board, railroad suppliers of equipment and products and rail labor. RSAC was first chartered during the Clinton Administration and was widely accepted because for the first time every constituency had an opportunity to present their ideas and concerns in the presence of other subject matter experts in the industry. The results have been remarkable, producing consensus regulation recommendations in the vast majority of rulemakings undertaken by the Federal Railroad Administration (FRA).

RSAC thrived during the eight years of the Bush Administration with unanimous support from all segments of the railroad industry, and RSAC continues today under the Obama Administration.

RSAC is a model for developing, modifying and even eliminating Federal regulations. It is a model that we have worked with, we believe in, and is a model that could be emulated in Federal regulatory proceedings in other industries.

The current railroad regulatory process is Not Broken, and does not require a New Fix. RSAC provides all rail constituencies direct input into addressing regulations that govern our industry. If It Ain't Broke, Don't Fix It certainly applies here. Any identified problems with the release of hazmat from railroad cars is not a hazmat issue, but is an indication that the Federal Hours of Service Laws need adjustment.

As modern manufacturing and health systems advance, the demands for products to meet the demands of technology and scientific processes continue to grow. Moving these products that are often classified as Hazardous Materials present many challenges.

An overwhelming majority of transportation professionals agree that the safest and most sustainable transportation system for hazardous materials is by rail. The current regulatory scheme applied to rail shipments of hazardous materials has proven to be a very safe means in which to ship hazardous materials. However, there are operational issues that this regulatory scheme has not resolved.

There has never been a single release of hazardous materials being transported by rail unless there was trauma to the rail car transporting the material. Our current fleet of railroad tank cars is adequate and designed to move these products safely and efficiently for many years. What still

needs to be addressed is the issue of fatigue of safety critical railroad operating employees. If this issue is adequately addressed the safety record of rail hazmat shipments will improve significantly.

During the debate concerning the implementation of Positive Train Control (PTC), over the last twenty years, the strength and the collision readiness of our rail tank car fleet were subordinate issues to the root causes of train to train collisions and track caused derailments.

The unpredictable work schedules of safety critical operating employees in the rail industry has and continues to be the root cause of the fatigue problems that have placed many releases of hazardous materials on the front pages of our newspapers. The complex work environment and the lack of any type of safety overlay train control system makes fatigue and the unpredictable work schedules that cause it, a public safety issue, not just a rail safety issue.

During the hearing on Positive Train Control before this committee on March 17, 2011, unpredictable work schedules and fatigue were discussed, not in the context of safe movement of hazmat, but in the overall intent of Congress in the Rail Safety Improvement Act (RSIA) of 2008.

Even with the full implementation of PTC, as scheduled today, more than 60% of the main line track in our nation will not be required to have PTC installed. The current map of required PTC implementation will place PTC on less than 40% of the current main line mileage, meaning more trains will be operated in non-signaled or Dark Territory than on PTC covered trackage.

By law and now by regulation, only PIH and TIH hazmat commodities above a certain level are required to be moved on PTC equipped track. This means after full implementations of PTC numerous types of hazardous materials will be transported on trains on lines without PTC protection. Products like caustic soda, sulfuric acid, Class A Explosives, ammonium nitrate, LP Gas, train loads of ethanol, fuel oil, and gasoline are just a few examples.

The practice of using Conditional Track Authorities in Dark Territory will also continue unabated unless FRA produces a change in that process during the recently chartered Dark Territory Working Group. In these days of instant communications and connectivity, our nation's freight railroads continue to dispatch trains with an archaic process known as "After Arrival Track Authorities". One train is told to wait at a certain location until an undetermined condition occurs, and then to proceed without any Real Time communication with the Train Dispatcher. The Centralized Dispatching system on most of our railroads today has overwhelmed the abilities of a single human being that is sitting in the dispatcher's seat with more work than one person can perform. After Arrival Track Authorities are issued to eliminate the distraction of real time communications with the controlling dispatcher.

The frequency of track inspections on tracks moving hazardous material products also has been a problem in the past. Timely track inspections should be conducted with a frequency directly proportional to the amount of traffic passing over a track segment by qualified inspectors.

This Committee created and passed into law the RSIA of 2008, and we congratulate you for that effort. It was the intent of Congress — in revising the century-old hours of service laws — to truly address fatigue in the railroad industry. The Hours of Service Language contained in the RSIA addressed and outlined a predictable work schedule with a defined Work – Rest schedule. The UTU and the Brotherhood of Locomotive Engineers and Trainmen (BLET) have both

testified before this Committee on several occasions about the chaotic and unpredictable work schedules that safety critical railroad operating employees are required to manage. Our two organizations representing all of the rail operating employees made many proposals for improvement in this complex operating environment. Several of our proposals were adopted by this Committee and passed by the House, only to be changed or eliminated in conference with the Senate. Consequently, fatigue in the industry has not been alleviated by this legislation and our members report that the problem has actually gotten worse in some respects since implementation.

In our discussion concerning the safe movement of hazardous materials, no action would produce a higher level of return in safety than giving the operating employees a predictable work schedule. The RSIA, as signed into law, provides for ten hours of undisturbed rest between work assignments. The current application of that required rest period is immediately following safety critical service. This application is misplaced because it does nothing to improve the predictability of reporting times nor does it allow employees the opportunity to plan their rest before reporting for duty.

One small improvement that will make a tremendous difference in the safety of all train operations is to simply move the required ten hours of undisturbed rest from immediately following service, to immediately preceding service. This minimum of ten hours of notification before reporting for twelve hours or more of safety critical service will allow operating employees to get their proper rest "prior" to reporting for duty so they can safely and alertly operate their train "while" on duty. An even greater safety enhancement would be to assign regular start times for each crew, or at a minimum require that crews be notified before going off duty the time they must report back for service.

UTU and BLET have been working with the staff of this Committee to put together a draft of Hours of Service Technical Corrections needed to fine tune the RSIA. I've included an overview of these recommendations at the conclusion of this testimony.

The railroads have worked hard since RSIA was passed to develop new software programs to enable their operations to deny the required rest days for employees. Many employees are required to observe their only day off while laying over in a one star hotel at the away from home terminal. The itemized six and two and seven and three work rest schedules in the RSIA remain a dream for 95% of our freight operating employees. In fact, after BLET and UTU testified to the success of the seven and three work rest schedules in place on one railroad, that railroad canceled every one of those work rest schedules. Today only a small percentage of rail thru-freight assignments across America have any form of predictability.

This committee received excellent testimony on March 17, 2011 from BLET President Dennis Pierce concerning the Hours of Service chaos in our industry today. Labor believes, and the records of this Subcommittee will show, that Congress intended to provide a predictable and defined work/rest period in the RSIA, and to this end our technical corrections are based on sound scientific evidence and simple common sense. They focus on the fatigue that is inherent in unscheduled rail operations and they are a response to the manipulation of off-duty periods at away-from-home terminals which is undoing much of what you tried to accomplish. As we have said on numerous occasions, fatigue in unscheduled service is easily managed by requiring a ten-hour call prior to performing service rather than requiring ten undisturbed hours immediately



following work.

To summarize, Hours of Service problems for operating employees is the biggest challenge in the safe transportation of hazmat by rail. The Ten Hour call is the answer. Treating operating railroad employees as if they were human beings is the goal of this testimony.

I will be glad to answer any questions and sincerely appreciate the opportunity to testify.

#### **SUMMARY OF UTU Recommendations**

1. Railroad employees covered by the hours of service law shall be provided a predictable and defined work/rest period.
2. A ten hour call for all unassigned road service. This provision would require the ten hours of undisturbed rest be provided immediately prior to performing covered service instead of immediately following service.
3. All yard service assignments with defined start times will be covered by the same provisions that now apply to passenger and commuter rail.
4. All yardmaster assignments will be HOS covered service under the freight employees.
5. The Secretary shall issue regulations within 12 months to require all deadhead transportation in excess of a certain number of hours to be counted as time on duty and a job start.
6. No amount of time off duty at the away from home terminal will reset the calendar clock of job starts, and the employee shall not be required to take mandatory rest days at the away from home terminal.
7. Twenty four hours off duty at the home terminal which does not include a full calendar day will reset the calendar clock.

8. Interim release periods require notification to the crew before going off duty. If the crew is not notified, the 10 hours uninterrupted rest will prohibit changing the service to include an interim release.

9. There shall be a two hour limit on limbo time per each tour of duty.

10. There shall be assigned a minimum of 24 hours off duty at the designated home terminal in each 7 day period during which time the employee shall be unavailable for any service for the railroad. The off duty period shall encompass a minimum of one full calendar day and the employee shall be notified not less than 7 calendar days prior to the assigned off duty period.

11. A railroad shall provide hot nutritious food 24 hours a day at the sleeping quarters when the crew is at the designated away from home terminal, and at an interim release location. If such food is not provided on a railroad's premises, a restaurant which provides such food shall not be located more than 5 minutes normal walking distance from the employee's sleeping quarters or other rest facility. Fast food establishments shall not satisfy the requirements of this subsection.

12. A railroad shall be prohibited from providing sleeping quarters in areas where switching or humping operations are performed.

13. Not later than 12 months after the date of enactment of this Act, the Secretary shall promulgate a regulation requiring whistle board signs allocated at least 1/4 mile in advance of public highway-rail grade crossings. Provided, however, such regulation shall not apply to such crossings which are subject to a whistle ban.

14. Under the railroad whistleblower law, the Secretary of Labor shall have subpoena power to require the production of documents and/or the attendance of witnesses to give testimony.

15. Notwithstanding any other provision of law, regulation, or order, whenever Congress enacts legislation mandating that the Secretary promulgate a railroad safety regulation, there shall be no requirement for a cost/benefit analysis by the Secretary.

16. During an accident/incident investigation process, upon request, a railroad shall produce event recorder information to law enforcement personnel and to the designated employee representative(s) defined under the Railway Labor Act.

17. In an engineer or conductor decertification proceeding, if the Secretary issues a final order in favor of an employee, a railroad shall be prohibited from subsequently attempting to discipline such employee for any alleged acts which may have arisen from the incident involved in the decertification proceeding.

18. In an engineer or conductor certification or decertification proceeding the Secretary shall have the authority to require the retesting of the employee, to order the employee's reinstatement with the same seniority status the employee would be entitled to but for decertification or refusal of certification, and to grant any other or further relief that the Secretary deems appropriate.

19. All federal railroad safety laws and regulations shall be subject only to the preemption requirements set forth in the Federal Railroad Safety Act.

20. A railroad owned or operated by a State or other governmental entity shall, as a condition of being a recipient of federal funds, agree immediately thereafter the receipt of such funds to waive any defense of sovereign immunity in a cause of action for damages brought against such railroad alleging a violation of a federal railroad safety law or regulation pursuant to title 28, 45, or 49, United States Code.

21. No state law or regulation covering walkways for railroad employees shall be preempted or precluded until such time as the FRA promulgates a regulation which substantially subsumes the subject matter.

22. In any claim alleging a violation of a federal railroad safety law, a settlement of such claim cannot release a cause of action, injury or death which did not exist at the time of settlement of such claim.

23. An employee of the NTSB or the FRA who previously worked as a railroad employee has the right to return to railroad employment with all seniority retained.

24. The National Railroad Passenger Corporation shall not be liable for damages or liability, in a claim arising out of an accident or incident unless the said Corporation is negligent in causing the accident or incident.

### **Signal Safety**

1. The Secretary, within 180 days from date of enactment, shall issue regulations requiring:
  - (a) Positive protection for all roadway workers fouling track where train speeds exceed 30 miles per hour or where positive train control is in effect.
  - (b) Class 2 and class 3 railroads operating over positive train control tracks to be equipped with a positive train control enabled locomotive.
  - (c) All highway-rail grade crossing warning systems where the operating speed exceeds 20 mph to be equipped with system health monitors which have the ability to notify the railroad of any problem, malfunction, or exception of the warning system, and repairs shall be promptly made.
  - (d)
    - (i) All highway-rail grade crossings be immediately flagged to protect roadway users where work performed on the track or signal system causes the active crossing warning system to falsely activate.
    - (ii) System testing and functionality verification of all active crossing warning systems where work performed on the track or signal system and where the system has been circumvented or otherwise manipulated or disabled to prevent false activations.
  - (e) Fall protection for employees working on signal structures.

2. Operating a vehicle requiring a commercial driver's license by a signal employee while on duty shall be considered covered service.
3. Time on duty shall include all work where there is a potential to interact or otherwise come into contact with safety-critical devices or circuits.
4. To be considered off-duty, a release period must provide the opportunity for the employee to obtain food if the release is more than 30 minutes; and if the release is more than 60 minutes, the railroad must provide the opportunity for the employee to obtain food and rest. Otherwise, the time shall be considered time on duty.

STATEMENT OF  
RICHARD F. TIMMONS  
PRESIDENT  
AMERICAN SHORT LINE &  
REGIONAL RAILROAD ASSOCIATION

BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS  
HEARING ON  
RAILROAD AND HAZARDOUS MATERIALS TRANSPORTATION PROGRAMS:  
REFORMS AND IMPROVEMENTS TO REDUCE REGULATORY BURDENS

APRIL 7, 2011

American Short Line and  
Regional Railroad Association  
50 F Street, N.W.  
Suite 7020  
Washington, DC 20001  
[REDACTED]

I am Rich Timmons, President of the American Short Line and Regional Railroad Association (ASLRRA), which represents the nation's 550 Class II and III railroads. I appreciate the opportunity to list those items the short line industry believes should be included in the Rail Title of a SAFETEA-LU reauthorization bill.

First, let me say that we endorse the concepts presented by the AAR. I will expand on a number of these in my testimony but each of their recommendations either help the short line industry and/or make for a stronger Class I network which is good for the whole industry.

ASLRRA's first priority is to extend the short line rehabilitation tax credit (45G) which expires at the end of 2011. We know this is dealt with in the tax title of the bill but our hope is to include the extension in your final SAFETEA-LU reauthorization bill and we want to emphasize how important that is to the short lines. Two Members of this Committee, Congressman Shuster and Congressman Costello are original co-sponsors of our current extension legislation, H.R. 721. In the last Congress we had 262 House co-sponsors of this legislation, including 57 Members of that Congress' T&I Committee. We hope every Member of the current T&I Committee will sign on as a co-sponsor of H.R. 721. We also hope that in your discussions with the Ways & Means Committee you will emphasize how important the tax credit is to maximizing investment in infrastructure, preserving service to small and medium size shippers and improving track safety. In a fiscal environment where federal funds for maintaining freight rail infrastructure will undoubtedly be constrained, the fiscally responsible step is to encourage private enterprise to fund private sector improvements with private sector dollars. Section 45G does precisely that.

We strongly encourage the Committee to enact the so-called SHIPA legislation extending the current freeze on longer and heavier trucks to the entire National Highway System. Increasing truck size and weights will divert rail traffic to the highways increasing congestion and highway repair costs. The change will also create a huge shortfall between the truck share of highway damage and their contribution to the cost.

As indicated we support the AAR recommendations on PTC. In addition we believe the federal government should help pay for this unfunded mandate. Funding PTC is well beyond the resources of short line railroads. It will force short lines to reallocate money from much more important rehabilitation projects to a highly complex system that will result in virtually no safety benefits for the typical short line operation.

As Chairman Mica and many other Members of the Committee have stressed repeatedly, the RRIF program has the ability to invest \$35 billion into rail improvements without an appropriation and using private sector commitments to repay the loans. However, absent improvements this program will remain stuck where it has been for 10

years. In February the short line industry testified before this Committee concerning the RRIF loan program and last month we participated in a T&I staff workshop on this subject. We have made a number of recommendations including providing a TIFIA-like subsidy that would allow more flexible loan terms, increasing FRA staffing resources, bringing the Credit Council and OMB participation into line with the 90-day requirement and easing certain collateral requirements. We will provide the Committee with draft language on these subjects.

We encourage the Committee to eliminate the unintended impact on small railroads of the Hours of Service provisions in the 2008 Rail Safety Improvement Act. Clearly they were drafted to address long haul conditions, but do not fit the mostly daylight short haul operations of small railroads. Granting relief from restrictions not at all relevant to small railroad operations will not impact safety, and continue the service which shippers expect from their Class II and Class III carriers.

We urge you to reauthorize the Rail Relocation Program. This is one of the very few programs that provide direct financial assistance to railroads. While railroads were able to compete for last year's TIGER funding program, the Rail Relocation Program is geared specifically to railroads and can be enormously effective in addressing railroad safety issues associated with grade separations and improving movement in and out of yards and industrial parks.

I appreciate the opportunity to present the views of the short line industry and am happy to answer any questions.





**Brotherhood of Maintenance of Way Employees Division  
of the International Brotherhood of Teamsters**

Freddie N. Simpson  
*President*

Perry K. Geller, Sr.  
*Secretary-Treasurer*

April 12, 2011

The Honorable Bill Shuster, Chairman  
Subcommittee on Railroads, Pipelines and Hazardous Materials  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Corrine Brown, Ranking Member  
Subcommittee on Railroads, Pipelines and Hazardous Materials  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Shuster and Ranking Member Brown:

Thank you once again for the opportunity to testify before the House Subcommittee on Railroads, Pipelines, and Hazardous Materials on April 7, 2011, regarding "Railroad and Hazardous Materials Safety Programs: Reforms and Improvements to Reduce Regulatory Burdens." The hearing was both well organized and well run, and we appreciate the Subcommittee's consideration of our views concerning railroad and hazardous materials safety and regulatory reform.

Pursuant to our request to submit additional information to the record, I am pleased to provide the following documents in support of our written and oral testimony of April 7, 2011:

- Regulatory Review of Existing DOT Regulations, Docket No. DOT-OST-2011-0025; Joint written comments of all Rail Labor organizations.
- DOT Hazardous Materials: Improving the Safety of Railroad Transportation of Hazardous Materials, Docket No. FRA-2011-0004; Joint written comments of seven Rail Labor organizations.
- Risk Reduction Program ANPRM, Docket No. FRA-2009-0038; Joint written comments of seven Rail Labor organizations.

- Evaluation of U.S. DOT/PHMSA Hazardous Materials Instructor Training Program (HMIT), 2009-2010 Program Year; Railway Workers Hazardous Materials Training Program – National Labor College.

On behalf of the BMWED, thank you for providing this opportunity to submit these relevant documents to the record. Should you or your staff have any questions or desire additional information regarding our written or oral testimony of April 7, 2011, please do not hesitate to contact me at 202-508-6449 or [Ricki@bmwewash.org](mailto:Ricki@bmwewash.org).

Respectfully,

A handwritten signature in black ink, appearing to read "Ricki Melton". The signature is written in a cursive, flowing style.

Director of Safety, BMWED



**BEFORE THE DEPARTMENT OF TRANSPORTATION**

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**DOCKET NO. DOT-OST-2011-0025:  
REGULATORY REVIEW OF EXISTING DOT REGULATIONS**

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**JOINT WRITTEN COMMENTS OF RAIL LABOR**

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The following rail labor organizations hereby file these written comments, and incorporate by reference their oral comments presented at the public meeting on March 14, 2011, in response to the Department of Transportation's ("DOT") "Regulatory Review of DOT Regulations" per its Request for Comments published in the Federal Register on February 16, 2011, Docket No. DOT-OST-2011-0025.

**Comments of the**  
**American Train Dispatchers Association (ATDA)**  
**Brotherhood of Locomotive Engineers and Trainmen/Teamsters (BLET)**  
**Brotherhood of Maintenance of Way Employees Division/Teamsters (BMWED)**  
**Brotherhood of Railroad Signalmen (BRS)**  
**International Association of Machinists and Aerospace Workers (IAM)**  
**International Brotherhood of Boilermakers (IBB)**  
**International Brotherhood of Electrical Workers (IBEW)**  
**National Conference of Firemen and Oilers/SEIU (NCF&O)**  
**Sheet Metal Workers International Association (SMWIA)**  
**Transport Workers Union of America (TWU)**  
**Transportation Communication Union (TCU)**  
**United Transportation Union (UTU)**

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***The DOT should be sensitive to but not be manipulated by railroad management's comments to the review requirements described in Executive Order 13563, "Improving Regulation and Regulatory Review."***

Some things in life are a given. The swallows return to San Juan Capistrano annually on the same date. Cicadas engage in noisy rituals every seven years. And railroads complain about too much regulation. A simple Google™ search demonstrates that which is obvious: the railroads constantly complain about being regulated. These complaints started at least as early as 1914 and are repeated on a consistent basis by railroads and their associations to whomever will listen.

History, however, shows that railroad regulation is directly proportional to the failures of railroads to behave in ways that society demands. The most contemporary example is the recent congressional directive in the Federal rail safety law, 49 U.S.C. § 20109, to protect railroad employees who are safety whistleblowers. The need for their protection was proven by years of intimidation and abuse of rail workers, with a resultant danger extending to shippers and the general public. The necessity of statutory protection has been verified by reports from the National Transportation Safety Board ("NTSB"), the Federal Railroad Administration ("FRA"),

the U.S. Government Accountability Office (“GAO”), and the DOT’s Inspector-General along with a legion of court cases.

The truth is that passage of the Staggers Rail Act of 1980, which deregulated the industry, eliminated any factual basis to verify railroad management complaints based on economics. The carrier’s complaints stem from their single-minded urge for exclusive power to unilaterally dictate the treatment of the public, shippers, and rail workers.

As a result, the DOT should know that the regulatory sky is not falling, and that carrier complaints are largely unsupported. Indeed, the very safety improvements the railroads routinely boast about result from, and are proportional to, the regulations implemented by FRA.

*The specific examples cited by the AAR either are not responsive to the Requests for Comments and/or are simply unsupported by the facts.*

Track Inspection Regulations:

The AAR boldly claims that track inspection regulations are too onerous and are standing in the way of progress. The AAR cited a GAO report on rail technology and concludes that it supports the need to reduce the regulation of track inspection. But the GAO report merely parrots the opinion of AAR’s membership and business partners: the railroad industry and its suppliers provided 50% of the twenty “rail safety technology experts” relied upon for the report. It does not support its claim that track inspection regulations should be reduced. Nowhere does the AAR refer to one specific track inspection regulation that it claims is outmoded or not needed. On the contrary, one of the most glaring failures of the FRA is to include a regulation limiting the speed at which visual track inspection may occur. The AAR is attempting to achieve a back-door repeal of that which Congress mandated in the Rail Safety Improvement Act of 2008 (“RSIA”): meaningful revision of track inspection regulations based on independent research, fact-finding, and consensus negotiation between labor and management. *See, RSIA Section 403, Track Inspection Time Study and Section 103, Railroad Safety Risk Reduction Program.*

Positive Train Control, Locomotive Inspections, Signal Inspections, Emergency Escape Breathing Apparatus, Civil Penalties, and Dark Territory Technology:

The AAR complaint of over-regulation list includes all the above, yet all are either covered by a Final Rule, are currently subject to waivers, and/or are related to a recent or pending NPRM. As such, they are precisely the type of comment that the DOT announcement made clear that it wanted to avoid receiving from stakeholders. The requirement for PTC originated from Congress, not the FRA or DOT, and the DOT cannot unilaterally reduce the regulatory mandates of Congress in that regard.

Risk Reduction Program:

The AAR complained to the DOT about the Risk Reduction Program (“RRP”) regulations not yet written but required by Congress through its mandates of the RSIA. Not only did the DOT request that comments not be directed towards items such as this, but the complaint itself reflects

an endemic lack of interest by the carriers in employee participation in rail safety matters. The entire point of the Risk Reduction Program was to approach rail safety by trying to reach another historic non-regulatory driven approach such as exemplified by the Railway Labor Act ("RLA"). It is simply incredible that the AAR still takes the position that it is safe to operate huge sections of main line track as dark (i.e., non-signaled) territory, without positive train control, lacking switch position indicators and where the switches are all opened with the same keys. The real meaning of the AAR comment is that it considers there to be an inadequate cost benefit to prevent horrendous loss of life and property in otherwise preventable accidents. The carriers make no pretense about preferring a safety system whose central theory is that oppressive discipline can be used to deter accidents that modern engineering and cognitive/behavioral psychological systems surely can avoid.

#### Whistleblower Complaints:

Like the RRP above, the AAR is complaining to the wrong entity about the § 20109 whistleblower statute. Not only does the AAR complain in the wrong forum, its complaint has the wrong facts. The § 20109 process does not remedy Section 3 grievances of the Railway Labor Act ("RLA"): it addresses and remedies retaliation against workers who request relief from illegal and unsafe operating orders, requests for medical attention, and related matters. The AAR knows that multiple proceedings often are nearly simultaneous that address different issues. Federal Employers Liability Act ("FELA") cases proceed sometimes in concert with Section 3 RLA cases. Railroad Retirement Board ("RRB") claims do as well. Disqualification cases under 49 CFR § 209.303 may occur at the same time as these other cases. If there is potential for contradictory decisions, the AAR fails to inform the DOT that it is because the RLA grievance process is so skewed in their favor; the carrier in that process is the judge, jury, and prosecutor standing in the way of the employee's defense and hampering the location and introduction of evidence, as well as intimidating both the witnesses and accused.

#### Cranes:

This is the one area that Rail Labor may be in agreement with the carriers and an area that can and should be addressed in the RSAC process with a high likelihood of success.

#### ***Railroad regulatory review has been constant and effective.***

The AAR's comment that the FRA, itself, does not have a specific plan to periodically review regulations is misleading by its omission of reference to the Rail Safety Advisory Committee ("RSAC") process. The FRA instituted the use of RSAC in 1996 to develop a consensus process to review railroad practices and consider addition, modification, and/or deletion of federal regulation. By definition, nothing can be done by RSAC without the consent of the railroads. As a result, for the past 15 years, the carriers themselves agreed to, and assisted in the development of, virtually all railroad regulation. For example, the following list describes the RSAC's work on just the Track Safety Standards (49 CFR, Part 213) that successfully occurred for most of the period from 1996 – 2011. Similar comprehensive reviews and revisions have been undertaken by the RSAC on numerous other railroad regulations during this same period:

RSAC Track Safety Standards Tasks

- **Task 96-1:** Complete review and revisions to 49 CFR Part 213 (Track Safety Standards). Final Rule published June 22, 1998.
- **Task 06-02:** Complete review and revisions to Part 213 (Track Safety Standards) relative to Continuous Welded Rail (CWR) and Joint Bars. Final Rule published August 25, 2009 with correcting amendments published October 21, 2009.
- **Vehicle/Track Interaction Task Force:** Task Force developed proposed revisions to Parts 213 (Track Safety Standards) and 238 (Passenger Equipment Safety Standards), principally regarding high-speed passenger service. NPRM published May 10, 2010. Final Rule pending.
- **Task 07-01:** Part 213 (Track Safety Standards) reviewed specifically to (1) Review controls applied to the re-use of rail in CWR “plug” rail; (2) Review issues related to rail cracks emanating from bond wire attachments; (3) Consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and (4) Ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. NPRM Pending.
- **Concrete Tie Task Force:** Developed recommendations for concrete tie standards in Track classes 1-5. NPRM published August 26, 2010.
- **Rail Integrity Task Force:** Developed recommendations on rail integrity issues, including substantive revisions to the defective rail Remedial Action Table to § 213.337. NPRM Pending.
- **Task 08-03:** Rail Integrity working group established to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. Developed recommended revisions for § 213.113 (Defective rails), §213.237 (Rail Inspection), §213.241 (Inspection Records), and new § 213.238 (Qualified Operator). NPRM Pending.

**Conclusion:**

Congress mandates that regulations be promulgated to effectuate its legislation, none of which can be subject to review in the DOT’s proposed process here. Any carrier complaint can be forwarded to the FRA and assigned to RSAC for work if it is deemed appropriate and useful. There is no reason to believe that this process will be any less effective in the future, particularly in light of the Risk Reduction Program mandated by Congress and other areas of progress.

It would be a mistake to compel the FRA to engage in a permanent process of scheduled rule reviews in light of the work of RSAC and the § 103(g) process of the Rail Safety Improvement Act of 2008. The FRA is chronically under-funded by Congress and/or under-budgeted by the Executive Branch. To force the FRA to divert its highly limited resources to do ‘make-work’ would force a resultant regulatory burden upon the regulators themselves, making it an ironic mockery of regulatory reform.

The DOT, through the FRA and the RSAC, has made every effort not to unduly burden operating railroad companies through excessive regulation. If the FRA has erred in this regard, it has consistently been on the side of under-regulating. The RSIA was a Congressional declaration of that fact. Railroads may complain about being over-regulated, but the facts belie that complaint. FRA regulations are sufficiently flexible, are subject to frequent and comprehensive review through the RSAC, and contain liberal waiver provisions that render carrier complaints about over-regulation largely moot.

Respectfully Submitted,

F. Leo McCann  
President, ATDA

Dennis Pierce  
National President, BLET/Teamsters

Freddie N. Simpson  
President, BMWED/Teamsters

W. Dan Pickett  
President, BRS

Robert Roach, Jr.  
General Vice President - Transportation, IAM

Danny L. Hamilton  
Director of Railroad Division Services, IBB

William Bohne  
Director - Railroad Department, IBEW

John R. Thacker  
President, NCF&O/SEIU

Dewey Garland  
Director of Railroad and Shipyard Workers,  
SMWIA

James C. Little  
International President, TWU

Richard A. Johnson  
Carman Division General President, TCU

Mike Futhey  
International President, UTU





March 24, 2011  
(Via online at [www.regulations.gov](http://www.regulations.gov))

Docket Operations Facility  
U. S. Department of Transportation  
1200 New Jersey Avenue, SE, W12-140  
Washington, DC 20590

Re: Hazardous Materials: Improving the Safety of Railroad Transportation of Hazardous Materials; Docket No. FRA-2011-0004

**Comments of the**  
**American Train Dispatchers Association (ATDA)**  
**Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)**  
**Brotherhood of Maintenance of Way Employees Division (BMWED/IBT)**  
**Brotherhood of Railroad Signalmen (BRS)**  
**Transport Workers Union of America (TWU)**  
**Transportation Communications Union (TCU)**  
**United Transportation Union (UTU)**

The seven railroad labor organizations ("Labor Organizations") identified above are the collective bargaining representatives of a significant majority of railroad industry workers engaged in train operations, train dispatching, and track, signal and mechanical maintenance, inspection, testing, and repair. The Labor Organizations and their collective membership have a vested interest in improving the safety of railroad transportation of hazardous materials, including the process for issuing movement approvals under 49 CFR § 174.50.

The Labor Organizations are filing these joint comments in response to the Federal Railroad Administration's ("FRA") Notice of Public Meeting published in the Federal Register on January 25, 2011. The notice announces that FRA has scheduled a public meeting in Washington, DC, to discuss its process of issuing movement approvals pursuant to 49 CFR § 174.50. Several rail unions signatory to these joint comments participated in said public meeting and provided oral

testimony to FRA regarding movement approval of non-conforming hazardous material tank cars and packages.

The Labor Organizations typically are not involved in the FRA approval process for the movement of tank cars and packages found in non-compliance with the Hazardous Materials Regulations (HMRs). However, our members are involved in the movement of such non-compliant cars, and work in proximity to such cars, once approval for movement is granted by FRA under the provisions of § 174.50.

FRA has been authorizing such movements since 1996 and we are unaware of any significant problems with the approval process. Generally, the Labor Organizations support the current process as a reasonable way to balance safety with the need to move non-compliant cars. We believe that FRA is best positioned to evaluate each request for movement approval and to impose specific conditions for the safety of each approved movement. Each approval of a non-conforming movement is issued on a case-by-case basis by FRA based upon the specific circumstances of non-compliance. Therefore, FRA is best positioned to evaluate each request for movement approval and to impose specific conditions for each approved movement. However, the notice includes information that is a concern to the Labor Organizations and we respectfully request FRA to address these issues as part of this regulatory review.

**The number of movement approvals issued by FRA over the last several years has more than doubled**

The notice states that the number of requests has steadily increased and the number of approvals has more than doubled since 2007. The notice also states that there have been no injuries or exposures during the 16 years that this approval process has been in place. We attribute the success of the approval process to the fact that each approval granted by FRA is specific and conditioned upon the particular circumstances of the request. FRA has indicated that FRA staffing levels are sufficient to handle the current volume of requests.

It is unclear if the cause of the current increase in approval requests is the result of improved inspection efforts, a decrease in the number of available repair facilities, an increase in certain types of recurring defects, greater shipper/industry awareness of the requirements of § 174.50, or previous non-compliance with the approval requirements of § 174.50. In any event, we contend that a doubling in the number of approvals over four years is a substantial increase and the underlying cause should be determined by FRA and appropriately addressed by shippers and carriers.

Given the current economic climate, it is unlikely that FRA will be provided increased appropriations to expand its staff. If the trend in requests for movement of non-conforming packages continues without a reciprocal increase in FRA staffing, it is inevitable that requests will outpace FRA's ability to timely handle approvals under § 174.50. The result will be non-conforming tank cars and containers left standing longer while awaiting movement approval at locations where our members or the public could be at risk of exposure to hazardous materials. The Labor Organizations are confident in the competence of the FRA staff; however, we are

concerned that overwhelming caseloads may cause the quality of the review to diminish due to the increasing volume of requests.

Railroads and shippers have a business interest in the timely review and approval of their movement requests. As soon as the backlog impacts their bottom line, railroads and shippers will pressure FRA to accelerate the approval process. Such acceleration will undoubtedly diminish the level of detail and due diligence now afforded each request, resulting in an increased probability of unintended consequences such as fire, explosion, or chemical exposure. The movement approval process under § 174.50 must continue to emphasize safety over expediency. As part of this regulatory review, FRA should fully investigate and address the underlying reasons for the increasing number of movement requests. Railroads and shippers must do more to reduce the incidence of non-conformance.

#### **Approvals of one time movements to repair facilities for leaking or damaged containers**

In FRA's Hazardous Materials Guidance Document, HMG-101, FRA discusses the history and development of the current rule. The movement approval authority prior to 49 CFR § 174.50 was the emergency exception provision contained in 49 CFR § 107.117, which was issued to "*prevent a significant economic loss, neutralize a condition that threatens national security, or prevent injury to persons or property.*" In discussing the history and development of § 174.50 in the notice, FRA pointed out that the industry often claimed an economic loss as the reason it required emergency exception movements for non-conforming packages or tank cars when, in fact, the actual reason was because the container was damaged or leaking. It appears that the industry may have come full circle and now may be seeking approval for movement of damaged or leaking containers when indeed the actual reason for the request is to prevent economic loss. The notice states:

"Movement approvals have been issued for such non-conformances as service equipment, tank shell, or lining failures; overloaded packagings; jacket, tank car shell, or head damage; stub sill weld cracks; failures of heater coils or thermal protection systems; tank cars overdue for required tests; and other reasons."  
See, 76 Fed. Reg. 4277 (Jan. 25, 2011).

We acknowledge that several conditions of non-conformance can be spontaneous and unpredictable, such as a tank shell, weld, or lining failure. However, some conditions are entirely predictable, such as tank cars overdue for required tests and overloaded packaging. We are concerned that railroads and shippers may be relying on the fact that approval for a non-compliant movement is an option, after creating the non-conforming condition in the first place. FRA could minimize or eliminate the number of these types of requests by penalizing shippers or railroads for failure to comply with existing regulations that result in entirely predictable non-conforming conditions.

**Employees should be notified and provided protection**

FRA should require notification and mandate appropriate protection for employees who will be moving and/or working in the vicinity of the non-conforming containers. The recently published Notice of Proposed Rulemaking for Emergency Escape Breathing Apparatus ("EEBA") contained implementation dates that spanned three (3) years. The joint labor comments to that rule recommended that the implementation dates be advanced significantly so that Class I railroads would implement the EEBA requirements within three (3) months of the effective date of the rule and full implementation would occur within one year. The steadily increasing number of movement approvals provides a compelling reason to accept Labor's recommendation to significantly advance the implementation date of the EEBA requirements.

The Labor Organizations are fully aware that the EEBA requirements would only apply to operating craft employees, leaving other railroad employees exposed to potential risk of inhalation or exposure to hazardous materials. FRA must require every request for movement of a non-conforming container or tank car – as specifically as possible – to identify populations of employees who potentially may be exposed. Also, each approval must be conditioned upon the notification and protection of those employees who will potentially be exposed to the hazardous material prior to when it is trans-loaded or moved to the repair facility.

For example, a particular pool of operating employees that regularly operates over the track, or engineering and mechanical employees scheduled to perform maintenance or inspections in proximity to that track or route, should be identified in the request. The specific individuals should be notified when they report for duty the day of the movement or trans-loading. Railroads have a number of communications options for conveying this information to employees, including but not limited to, bulletin orders, computerized notices, supervisory communications, job briefings, informational broadcasts via radio or data terminal, etc. Protection of such employees would include but not be limited to prohibiting the assignment of work in proximity of the approved movement or during trans-loading operations.

Also, 49 CFR § 174.26 requires that the train crew be provided a document indicating the current position of each rail car containing hazardous material. FRA should amend the regulation to require that each consist document not only identify the position of the hazardous material cars in the train, but also identify the existence and position of each non-conforming container moving under a § 174.50 approval. The approval and documentation should also specify any conditional limitations applicable to the movement such as maximum speed, clearances, buffer cars, etc.

**Leaking containers and tank cars must be plugged, patched and stabilized prior to moving to the nearest repair facility**

Currently, FRA asks for the planned destination of the move. 49 CFR 174.50 restricts the movement of leaking or damaged containers "...without repair or approval only so far as necessary to reduce or to eliminate an immediate threat or harm to human health or to the environment when it is determined its movement would provide greater safety than allowing the

*package to remain in place.*” Notwithstanding the fact that the regulation does not specify who makes such a determination, movement without approval is limited to “only so far as necessary to reduce or eliminate an immediate threat” to life, health or the environment.

Consistent with the concept of minimizing the risk of exposure embodied in 49 CFR § 174.50, leaking or unstable containers must be temporarily or permanently plugged, patched and stabilized prior to movement approval authority being granted, and then be required to be transported to the nearest repair facility. It makes little sense to move a damaged or non-conforming container hundreds of miles forward when a qualified repair facility may be much closer in the opposite direction; however, FRA cannot make an informed decision in this regard without the applicant identifying the nearest facility capable of making the necessary repairs. Therefore, we believe the request for approval should require the railroad to identify not simply the planned repair facility, but also the nearest repair facility. FRA must consider this additional information in issuing conditional movement approvals.

FRA also should require the application for movement approval to identify the date the nonconforming container was discovered. It is important to address defective and leaking containers as soon as they are discovered. A leaking, damaged, overloaded, or defective container remaining in regular service without timely notification to FRA and rail employees working in proximity to the non-conforming car unjustifiably delays mitigation and places employees and the public-at-large at risk.

#### **Centralized communication network for approval requests**

At the February 22, 2011, public hearing, the concept of a centralized web-based communication network for submitting approval requests was discussed. The Labor Organizations would not be opposed to the establishment of such a centralized web-based communications network provided that FRA closely monitors the site and expeditiously assigns each request for movement approval to the appropriate FRA personnel for investigation. Such a centralized process would make sense only if it improved response time and expedited the investigation and approval process.

#### **Blanket movement approval for certain types of non-conforming tank cars or packaging**

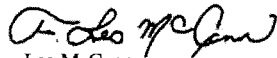
At the February 22, 2011, public hearing, the Chlorine Institute and the Association of American Railroads indicated that they would be submitting a document to FRA regarding the concept of “blanket movement approval” for certain types of non-conforming tank cars and packaging. The Labor Organizations are opposed to any “blanket” movement approvals that would be self-executing upon submission to FRA. The DOT/FRA has the enforcement authority and statutory responsibility to ensure the safe transportation of hazardous materials, including the issuance of movement approvals with appropriate limiting conditions for non-conforming tank cars and packages. FRA/DOT cannot abandon its statutory authority to investigate the safety implications of moving non-conforming cars and packages, nor can FRA/DOT process requests for

movement approvals without a detailed investigation of the circumstances and risks associated with each incident of non-conformance on a case-by-case basis.

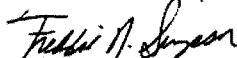
If there is compelling evidence that certain non-conforming conditions should no longer be subject to the approval requirements of § 174.50, such conditions, if they do exist, should be addressed through the rulemaking and public comment process. The Labor Organizations are opposed to the concept of a blanket waiver for non-conforming conditions currently subject to approval under § 174.50. That subject would be more appropriately addressed through rulemaking.

The Labor Organizations appreciate FRA conducting the public hearing on February 22, 2011, and for providing this opportunity to submit comments to the public docket.

Respectfully submitted,



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President, ATDA



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February 6, 2011  
(Via online at [www.regulations.gov](http://www.regulations.gov))

Docket Operations Facility  
U. S. Department of Transportation  
1200 New Jersey Avenue, SE, W12-140  
Washington, DC 20590

Re: Risk Reduction Program ANPRM, Docket No. FRA-2009-0038

**Comments of the  
American Train Dispatchers Association (ATDA)  
Brotherhood of Locomotive Engineers and Trainmen (BLET/IBT)  
Brotherhood of Maintenance of Way Employees Division (BMWED/IBT)  
Brotherhood of Railroad Signalmen (BRS)  
Transport Workers Union of America (TWU)  
Transportation Communications Union (TCU)  
United Transportation Union (UTU)**

The seven railroad labor organizations ("Labor Organizations") identified above are the collective bargaining representatives of a significant majority of railroad industry workers engaged in train operations, train dispatching, and track, signal and mechanical maintenance, inspection, testing, and repair. The Labor Organizations and their collective membership have a vested interest in the evaluation and management of safety risks as a means to reduce the consequences and rates of railroad accidents, incidents, injuries and fatalities through Risk Reduction Programs ("RRPs") mandated under Section 103 of the Rail Safety Improvement Act of 2008 ("RSIA").

The Labor Organizations are filing these joint comments in response to the Federal Railroad Administration's ("FRA") Advance Public Notice of Proposed Rulemaking ("ANPRM") published in the Federal Register on Dec. 8, 2010. *See* 75 Fed. Reg. 76345, *et seq.* The order of these comments is not intended to reflect any sequential priorities of the Labor Organizations. The Labor Organizations are purposely not addressing every item in the ANPRM and are not waiving objections to unaddressed items at a later date.

- I. It is imperative that the FRA address a fundamental misunderstanding of the participatory role of Rail Labor in the Congressionally mandated dynamics of railroad risk reduction, Section 103 of the RSIA.**

To achieve true and sustainable risk reduction and a proactive safety culture, it is critical that

FRA focus on the clear mandate of Section 103(g)(1):

“(g) CONSENSUS.—

(1) IN GENERAL. — Each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any non-profit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.”

A. Congress rejected the previous pattern of FRA enforcement of railroad safety decisions because it was inadequate to protect the public.

Congress, alarmed by safety concerns arising from a series of rail accidents and the reports of various agencies held extensive hearings to get to the root causes of the problems and to craft legislative solutions. Congress refused to permit railroads to unilaterally decide issues of safety because it would not be in the public interest. Congress concluded that the previous method of safety enforcement (FRA supervision of railroad compliance) also failed to meet minimum requirements to protect the public and further improve railroad safety.

B. Congress required the active participation of employee labor organizations representing a class or craft of directly affected employees in creating RRP.

Congress, following the recommendations of safety experts from both inside and outside the railroad industry, recognized that significant improvements in rail safety could only occur with the active participation of the workers themselves, through their collective bargaining representatives. As a result, when Congress enacted Section 103 of the Rail Safety Improvement Act of 2008, Public Law 110-432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20156), it included a directive that the Secretary of Transportation issue a regulation by October 16, 2012, requiring all Class I railroads and others to develop a Risk Reduction Program. Congress mandated that railroads negotiate with their rail labor unions using “good faith and best efforts” to reach consensus over the contents of the RRP.

C. The ANPRM undermines the decision made by Congress that Rail Labor must perform a significant role if risk reduction in the railroad industry is to be achieved.

The FRA’s definition in its ANPRM of a required RRP implies that what will be submitted will be a unilaterally created RRP by each Class 1 carrier, instead of a consensus agreement of rail carriers and Rail Labor. See Sec. I, 75 Fed. Reg. 76345. The ANPRM treats the requirement of collaboration and agreement with employee labor organizations as an ancillary aspect of the RRP building process instead of being **the most critical aspect of the entire process**.

This characterization is troubling because prior to the issuance of the ANPRM, the Rail Labor community raised this particular matter directly to the attention of the FRA after passage of the RSIA. The Labor Organizations again express their concern that, absent FRA enforcement of the



Congressional mandate, rail carriers will engage in their usual practice of unilateral dictation and implementation of safety practices. Absent clear direction from FRA at the onset of the RRP development process, carriers will be free to ignore the consensus mandate of the RSIA, waiting instead until after the actual FRA RRP regulations are issued and then, without sufficient time for productive collaborative work, dictate a 'take it or leave it' approach to Rail Labor, thereby stymieing Congressional intent and leaving the public and rail employees still at risk for avoidable rail tragedies. The Rail Labor community raised the same issues when the BAA concept proposals were authorized by the FRA in 2009 that actually provided public funds to underwrite the initiatives that the carriers unilaterally might wish to take. The BAA similarly provided no platform for significant early labor participation. In both situations, the FRA was unresponsive to overtures from the Rail Labor community to be a significant part of, and an early participant in, the RRP process as mandated by Congress.

The framing of the ANPRM reinforces the devaluation of the significant contribution that employee labor organizations can and will make if FRA complies with and supports the collaborative mandates of Section 103. FRA must reframe its approach to RRP to be inclusive of employee labor organizations early in the process. The Labor Organizations are ready, willing, and able to contribute to the contents of each carrier's RRP as required by Congress.

At a minimum, the following must be part of a detailed, collaborative effort between the Labor Organizations and the carriers, irrespective of the role of the FRA in the interim stages prior to approval of submitted Risk Reduction Program Plans ("RRPPs"):

- Risk Based Hazard Analysis must include each Labor Organization's input and participation;
- Technology Implementation Plans must include each Labor Organization's input and participation;
- Fatigue Management Plans must include each Labor Organization's input and participation;
- Railroad analysis of safety risk must include each Labor Organization's input and participation. The safety risk analysis should not be subject to blanket FOIA protection; however, the Labor Organizations would consider, in good faith, certain appropriate limits on disclosure where such promote safety and employee participation in RRP;
- Risk Reduction Plans should not be subject to blanket protection from disclosure; however, the Labor Organizations would consider, in good faith, certain appropriate limits on disclosure where such promote safety and employee participation in RRP;
- Risk Reduction Plan development must support and emphasize: commitment from all stakeholders; non-punitive participation; systematic and objective data gathering; joint analysis of data; joint problem solving; and joint consensus-based corrective actions.

The following language should be included in the regulations to implement the significant role for Rail Labor mandated by Congress:

“The Secretary finds that the consensus requirements in §20156 (g) (2) are an intentional departure from prior rail safety law structure, and are a critical element to achieve necessary reform of rail safety culture and field practices. Although Congress did not specify when this process was required to commence, the Secretary finds that the statutory times and purposes are best served by commencing the consultation process as early as possible. Accordingly, all covered carriers and rail labor organizations shall respond promptly to any reasonable request by the other to meet and consult at any time after the effective date of the passage of the RSIA as to any matters in any way related to RRP. The organizations and carriers must not unreasonably refuse to meet and confer. The Secretary finds that the duty to consult in good faith means to ‘exercise all reasonable efforts’ to reach a consensus agreement on matters involved, as interpreted by the case of *Chicago and Northwestern Railway Company v. United Transportation Union*, 402 U.S. 570 (1971). The phrase ‘and use its best efforts to reach agreement with’ shall be interpreted to mean application of vigorous, persistent and conciliatory efforts to a higher degree and standard than the more modestly phrased requirement in the RLA, referring to ‘every reasonable effort.’ 45 U.S.C. § 152 (First). The Secretary expects carriers to submit consensus based RRP’s for approval.”

## **II. Advance Notice of Proposed Rulemaking**

### RRP Requirements and Implementation

The language of the ANPRM addressing RRP Requirements and Implementation raises a variety of important issues, but that list should be broadened to include additional critically important safety concerns, including but not limited to:

- risks posed by joint operations;
- risks posed by joint operations with passenger and commuter trains;
- risks related to joint transportation modes with non-railroad carriers;
- shippers;
- security risks;
- contractors and subcontractors to railroads;
- specific contents of cargoes;
- high risk location of certain cargoes and routes;
- improved FRA coordination;
- National Transportation Safety Board recommendations;
- improved state rail regulatory procedures;
- timing and deadlines for negotiating with rail labor;
- incorporation of modern cognitive and behavioral science concepts into railroad safety programs;
- disclosure of all carrier bonus, incentive, and compensation systems that reward

management employees for meeting or exceeding safety related goals, targets, benchmarks, or milestones;

- disclosure of policies and data related to waiver and discipline practices that in any way discourage accurate reporting of accidents, incidents, injuries, or close calls; and
- incorporation of railroad contractor and subcontractor safety within each carrier's RRP and RRPP.

The Labor Organizations support a broad based approach to the design of the various RRP elements, which should be scientifically-based and data-driven. Although the presence of contractors on a railroad and the nature of joint operations introduce a level of complexity to RRP development, implementation and execution, contractors and joint operations are commonplace and, particularly on the Class I railroads, these carriers have successfully accommodated such complexity in complying with the requirements of other FRA regulations. RRP's should not be accorded second-class status in this regard.

The records maintenance requirements should be at least six years. FRA's proposal that railroads be required to develop and submit a risk-based hazard analysis and an RRPP for approval six months after the publication of the final rule, and to fully implement the RRP six months after the hazard analysis and the RRPP have been approved by the FRA, is problematic unless the final rule is published prior to April 16, 2012.

Additionally, the Labor Organizations believe that the "good faith challenge" provisions set forth in 49 C.F.R. § 218.97, §214.313(d) and §214.503(a) incorporate risk reduction principles because they empower individual workers to require adherence to federal regulations and safety and operating rules. Indeed, whenever the FRA's Railroad Safety Advisory Committee considered the issue of good faith challenge, the Labor Organizations strongly advocated for a broad challenge provision. We believe that good faith challenge rights facilitate rules compliance and operational safety. Good faith challenge rights should be broadened and included in the RRP regulation.

#### General Request for Information

While our comments on the subjects raised by FRA are equally applicable in the larger context, this singular point is also worth making. The Rail Organizations view the RRP process as a unitary endeavor. It is inappropriate to mechanistically require that each component or element of a RRPP meet or exceed some arbitrary, pre-determined cost/benefit formula. It may be that an individual component or element that, in and of itself, is costlier than the specific benefit provided thereby, produces a more optimal safety outcome because of the synergy of the RRP as a whole. Such a component or element should not be excluded from a RRP due to excessive, unjustified, or unnecessary cost.

It appears that the FRA has given insufficient thought as to who constitutes the "public" from which it seeks input. The obvious answer is that the FRA should identify stakeholders as it normally does which, in this situation, would include but not be limited to:

- Appropriate state and local government entities in which rail lines are or will be situated;
- Educational institutions which are involved in studies of transportation, environmental, safety, logistics, and related fields;
- Appropriate public associations with interests in those same fields identified above;
- Commercial and non-profit entities which provide investigatory or 'think-tank' services; and
- Key entities who have testified before Congress on these issues and who have filed public comments for the record.

#### Identifying Railroads With an Inadequate Safety Record

There are additional data elements, in addition to those identified in the ANRPM, that directly lend themselves to valid statistical measurement of the quality of a carrier's management and safety performance. These include, but are not limited to:

1. Number of disciplinary charges filed for rule violations in the preceding 5 years, normalized as a percentage of craft employees employed.
2. Number of whistleblower cases (§20109) filed by employees since October 2008, normalized as a percentage of craft employees employed.
3. Number of employee dismissals in the preceding 5 years, normalized as a percentage of craft employees employed.
4. Number of FRA reportable accidents and injuries in the preceding 5 years, normalized as a percentage of craft employees employed.
5. Number of FRA accountable accidents and injuries in the preceding 5 years, normalized as a percentage of craft employees employed.
6. Carriers that have "Excepted Track" AND carry placarded hazardous materials OR non-placarded military munitions.
7. Number of track miles of "dark territory" (excluding yards), normalized as a percentage of total track miles.
8. Turnover rate of employees and source of new employees (prior employees of other carriers with a known history).
9. Number of grade crossings (both public and private) on territory, and how many are protected by active warning devices, broken down by type of active devices (i.e., flashing lights only, lights and bells only, lights, bell and gates, etc).
10. Number of meet and confer sessions related to safety which were requested by Rail Labor or rail management, the number agreed to, and the results of those meet and confer discussions.
11. The position of the carrier in the Class 2 and 3 ranking lists of the FRA for reportable accidents, injuries, or incidents and the extent to which those are subject to being aggregated by common management or holding company status.
12. Relative frequency and total of number of occurrences of track being taken out of service due to defects or slow ordered due to track defects.
13. Evidence of misrepresentation of safety records, creation of false or altered safety records and improperly influenced safety data origination.

14. Retaliation, intimidation, and over-all culture, attitude, policy toward safety reporting by employees.
15. Responsiveness to employee reports of risks, hazards, defects, practices, injuries, near-misses, and safety complaints.
16. Consistency and transparency of safety policy and rule enforcement; over-use of arbitrary discipline, favoritism of employees who are willing to cut corners, and related subjects.
17. "Safety incentive" programs and policies that create "peer pressure" within work groups not to report injuries in order to "preserve" the incentive prize for the larger group.
18. Contractor data on rules compliance, safety audits, and accidents/injuries.

In addition to the above, FRA must consider a carrier's past response to risks, hazards, defects, near misses, and safety complaints reported by employees. Does the carrier have a history of ignoring them until an incident occurs followed by a short-lived period of frenzied compliance activity, or do they take a pro-active and non-punitive approach to such reports and take timely and appropriate corrective action?

FRA must also consider the effectiveness of operating rules and practices in risk reduction. Does a company have rules which are intended to prevent a particular type of accident or injury but actually, in custom and practice, allows those rules to be selectively bypassed (e.g., to speed up work or perform work with insufficient manpower and equipment in violation of carrier rules/practices) so that non-compliance becomes acceptable and routine – i.e., a PRACTICE contrary to the rule(s)? Such would be a sure sign of a railroad saying one thing but doing another – and that is the most insidious form of poor safety practice and process.

FRA should also consider the correlation between FELA filed cases, §20109 filed cases, and FRA filed accident, injury, and incident reports to reveal concentrations of safety issues.

As part of the RRP process, FRA should audit all carriers including those performing well, to evaluate the effectiveness of their safety and training programs and in particular risk reduction and safety culture programs. FRA should require RRP to effectively remove the specter of harassment and intimidation in favor of programs designed to be non-punitive and based upon root-cause analysis and prevention of reoccurrence. Indeed, special attention should be given to carriers who have entered into voluntary safety agreements with their employees to glean the "best practices" from those voluntary and cooperative agreements.

Conversely, FRA should pay particular attention to railroads that regularly intimidate employees to cut corners, hold formal hearings and discipline employees whenever accidents or injuries are reported, coerce employees to participate in editing or other falsifications/omissions in safety data and accident/incident/injury reports and/or who have terminated previously negotiated safety agreements with their employees. FRA's analysis in this regard must also consider the impact of bonuses and incentives offered to mid-level and frontline managers to improve productivity and reduce reportable injuries.

To assist FRA in determining the extent of employee harassment and intimidation, the Labor Organizations believe there is no substitute for interviewing employees actually doing the work. This could and should be done scientifically by mail survey, supplemented by FRA-conducted employee interviews without management present, so that employees may speak freely. FRA must prohibit any information gathered in the interview process from being attributed to any particular employee or group of employees. Such information shall only be permitted to be reported to the railroad by FRA in aggregate and in a format which assures the confidentiality of employees. The Labor Organizations also strongly suggest that the FRA survey, and the FRA interview process and questions, be uniform from railroad to railroad, so direct comparisons between railroads and various programs can be made.

These assessments will necessarily include class II and III railroads, and there are significant differences in management, policy and culture on such railroads. However, given the relatively small work forces, particularly among the class III railroads, it would not be overly difficult or burdensome to quickly get a good sense of employee perceptions regarding safety and risk and what they are based upon.

Finally, the Labor Organizations believe the statutory mandate that RRP's be required on "each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation" is susceptible to no interpretation other than its plain meaning. *See* 49 U.S.C. § 20156(a)(1). Accordingly, the regulation should exempt no railroad — other than plant railroads, which currently are exempt from FRA regulation so long as they operate within the plant or on immediately adjacent leased tracks, provided movement involves only cars destined for or coming from the plant — from the scope of the rule.

#### Contractors and Subcontractors to Railroads

Contractors and subcontractors to railroads must be addressed in each carrier's Risk Reduction Plan, risk analysis, and Risk Reduction Program Plan. Contractors and subcontractors to railroads must adhere to the carrier's RRP and RRPP, affirm in writing to the carrier and FRA that their employees have been trained, and remain in compliance just as if they were regular employees of the company. Should the contractor or a subcontractor providing "safety related employees" to a railroad fail to comply with the carrier's RRP and RRPP, its work within the industry must be discontinued until they demonstrate both the commitment and ability to operate in full compliance.

Contractors and subcontractors should be incorporated into a railroad's RRP to the same extent that the railroad's own employees who perform the same work would be subject to the RRP. How such incorporation would occur would depend upon the size of the contracted workforce and the type and scope of the work performed. With respect to whether only contractors who perform safety-sensitive functions for the railroad should be incorporated into a RRP, the most consistent safety outcome would be to require incorporation of any contractor function that would be included in the RRP if the same work/function was performed by an employee of the railroad. The railroad should be responsible for having in place a binding document

memorializing which elements of the RRP would be administered by the contractor, and the contractor and the employing railroad must assure compliance.

#### Risk-Based Hazard Analysis

The ANPRM recites the RSIA requirement that each railroad develop and implement an RRP that “systematically evaluates railroad safety risks on its system”<sup>1</sup> and then asks “How can a risk-based hazard analysis accomplish this mandate?” This is a peculiar question to ask given the clear Congressional mandate. The question implies that such ordinary and typical hazard analysis cannot be readily accomplished in the rail industry. The science of risk-based hazard analysis is well established and has been effectively utilized for many years across a host of industries, including some even within the railroad industry.

The Labor Organizations agree with the experts that the key to effective hazard analysis within the railroad industry requires broadening the usual FRA/carrier focus to include scientifically-based data collection and analysis; with the inclusion and active participation of affected employee labor organizations in the process.

Basic research can link the chain of risk and hazard causation from track inspection to track defects to derailments to cargo types to geographic issues to susceptibility of damage based on demographics. This chain of causation also highlights the criticality of having Rail Labor participate in risk reduction plan strategies because the actual workers know the reality of what occurs in the real world.

For risks related to infrastructure and equipment the RRP should outline a robust program of inspection, repair and maintenance, along with appropriate training of those responsible for said inspection, repair and maintenance. For risks related to human factors, including management structure and operating rules and practices, RRP efforts should focus on removing systemic obstacles to safety improvement, and non-punitive remediation rather than discipline when the inevitable human errors occur. A focus on the behavioral, rather than the systemic, will not produce an effective RRP because behavioral modification approaches attempt to correct flaws in the safety system by addressing the symptoms rather than correcting the underlying condition. Moreover, such an approach requires that every time a particular safety hazard is encountered, the modified behavior is necessary to prevent an accident.

Given that all humans inevitably make mistakes or errors, addressing the problem by correcting the systemic flaw or eliminating the hazard, removes the human element. For example, merely issuing a directive to avoid a close clearance in a yard or not foul a track, or simply telling employees to avoid close clearances or not foul a track, attempts to address the problem by only modifying the employees’ behavior. Removing or eliminating the hazard is far more effective. Success will be demonstrated by data establishing reductions in both accidents/incidents and precursor events. Safety culture will be improved to the extent the RRP is properly designed and

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<sup>1</sup> See § 20156 (a)(1)(A)

executed, thereby creating a feedback loop supported by reductions in unsafe outcomes that are realized.

#### Fatigue Management Plans

Of utmost safety concern for operating employees is the totally unpredictable work schedules that are the major source of fatigue among the operating crafts. The ANPRM mandates that the required Fatigue Management Plans should include elements addressing "Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature." As the scientific community has documented with over 40 years of fatigue research, a human being cannot possibly be rested to work safely unless that human being knows when they must report for service.

Operating employees working in "unassigned service" require proper rest periods in advance of performing safety critical service. The current safety culture in the rail industry is significantly affected by the various availability policies. Often, safety critical employees are forced to report for service even when fatigued or face disciplinary hearings and loss of employment. FRA has all the science and data needed to take strong action to eliminate fatigue as a safety issue in rail operations. The Labor Organizations encourage FRA to use the RRP as a mechanism to effectively mitigate/eliminate fatigue among railroad workers.

In the Hours of Service Interpretations prepared and distributed by FRA on June 26, 2009, FRA stated: "It appears that this interpretation would also best address the acute fatigue of employees working at different times of day and night, by ensuring that their best opportunity for rest, free from interruptions by the railroad, comes just prior to their going back on duty, so that they are well rested when they go to work, and better able to remain reasonably so throughout the duty tour."<sup>2</sup>

FRA acknowledges that the 10 hours of mandated rest applied immediately preceding required service is the strongest fatigue mitigation tool available and will virtually eliminate acute fatigue as a safety issue for operating employees. We encourage FRA to take immediate action to implement this requirement and to require ten hours of advance notification for all operating employees not otherwise on assignments with defined start times in each carrier's fatigue management plan.

The rail industry has spent large amounts of money purchasing and creating software programs to avoid creating predictable work schedules for operating employees. The industry has even created their own vernacular, using such terms as "dropped turns" and "paper deadheads" as justification for unpredictable schedules and the calling of fatigued safety critical employees for service.

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<sup>2</sup> Federal Railroad Administration Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as amended, 74 Fed. Reg. 30665, 30671 (June, 26, 2009)



FRA and industry stakeholders know the solution to acute and cumulative fatigue for operating employees is the “Ten Hour Call.” The Labor Organizations urge FRA to act to require ten hours of prior notification as part of the RRP.

For BMWED, fatigue is as much an issue as it is for any other railroad employee. Indeed, about half of the BMWED’s membership performs service in traveling gangs that require the employees to be away from home for periods of time. Those employees not only do not sleep at home each night; they are deprived of the companionship of their families for extended periods of time. These stresses add to the fatigue BMWED members already obtain from the strenuous nature of the work they perform. Although the work performed by BMWED members generally does not fall within the criteria of “covered service” as defined under the Hours of Service regulations (49 CFR §228.5), maintenance of way (MW) employees are considered “safety-related employees” covered within the scope of 49 U.S.C. 20156(f)(1). A fatigue management plan for maintenance of way employees must address cumulative fatigue from both regular assignments and inadequate lodging and meal arrangements that run the gamut from multi-occupant “camp cars” to carrier provided double and, at times, single occupancy hotel/motel lodging to simple cash per diem payments to employees where the carrier takes no responsibility for the meals and lodging obtained by the employees. Additionally, FRA must consider fatigue caused by a MW employee’s short-term or sustained response to emergency situations such as derailments, natural disasters, and other intensive working conditions.

Cumulative fatigue for a large percentage of maintenance of way employees can be exacerbated if the employee’s commute home is of several hundred miles or more on rest days. These commutes are the product of work rules pushed by carriers in collective bargaining and before Presidential Emergency Boards that greatly extended the areas that gangs may operate over. Railroad RRP’s must mitigate these long commutes at the beginning and end of the work period for regional and system production gangs. Railroad RRP’s should immediately implement single occupancy accommodations for MW employees on traveling gangs in order to provide such employees an opportunity to obtain restful sleep at carrier-provided lodging facilities. Regularly scheduled meal times must also be addressed in RRP’s and adhered to as a means to reduce cumulative fatigue among MW employees.

Camp cars, a vestige of the past on every major railroad except Norfolk Southern (NS), should be outlawed as a means to house MW employees on company property. NS camp cars have multiple-occupancy lodging “spaces” and a “commissary car” where meals of dubious quality are provided. Camp car accommodations also isolate the employees lodged in them from interaction with people in surrounding towns and cities. Sharing overnight accommodations, shower facilities and bathroom facilities with multiple unrelated individuals does not provide an opportunity for MW employees to obtain restful sleep. The Labor Organizations must note that such accommodations cannot be used to house covered employees under the Hours of Service Act. However, fatigue does not discriminate between “covered” and “non-covered” employees; therefore a lodging arrangement prohibited for one group of safety related employees must be prohibited for the other in the interests of safety. The Labor Organizations believe that the Norfolk Southern RRP should specifically set a reasonable date for the elimination of camp cars, except for their use in limited emergency situations such as exceptional natural disasters.

MW fatigue caused by a MW employee's short-term or sustained response to emergency situations such as derailments, weather events, natural disasters, and other intensive working conditions must also be addressed in each carrier's RRP. Each RRP should provide detailed plans for the mitigation of fatigue during emergency situations. Such detailed plans must assure MW employees access to healthful and nourishing food, clean and readily available drinking water, access to bathroom facilities, and access to lodging for appropriate rest after a maximum number of hours on duty.

#### Technology Implementation Plans

Similarly, Technology Implementation Plans (TIPs) must be subject to the good faith and best effort provisions of §103(g). This would include joint labor/management analysis of the safety impact, feasibility and effectiveness of technology and under what conditions such technology shall be implemented to maximize risk reduction.

RRPs must fully analyze and eliminate problems associated with electronic authorities. Such problems include, but are not limited to, miscommunication or misinterpretation of electronic authorities, employee training, computer "crashes," corruption of electronic authorities, security of electronic authorities, and possible misidentification of employees and/or unauthorized use. Remote authorities, where the train dispatcher or control operator is not directly involved in the decision logic or authority issuance, should not be allowed at any time under the RRP. TIPs must also address how roadway maintenance machines and highrail vehicles will be made "visual" to PTC systems on PTC-equipped territory and to the signal system on non-PTC equipped signalized territory.

For railroad employees in general, the application of available technology in the rail industry has been marked by poor or non-existent training standards, and inconsistent training of employees from one carrier to another. In cases such as the use of remote control locomotives, the absence of governing regulations further exacerbates problems related to the implementation of the technology. One of the basic tenets of risk reduction is adequate training of workers on the tools and equipment they will use. With Positive Train Control coming in the next few years with an incremental implementation strategy, TIPs must improve the level of training for the users of technology.

For Signalman, the lack of training combined with the rapidly evolving technologies in highway-rail grade crossings and signal systems prior to installation poses a significant risk to the safety of rail employees and the public. Signal employees are typically required to install and maintain these new technologies without initially being trained on anything other than the equipment's basic operation (e.g., turning the equipment on and off). Without proper training, a signalman is subject to reading a complex equipment manual which is often several hundred pages in length in order to maintain and troubleshoot the equipment. Not only does this practice take valuable time away from the signalman when performing maintenance, but also when troubleshooting. The Signalman is required to quickly search through the manual, possibly overlooking key elements, while attempting to restore the equipment to working order. TIPs must improve the level of training for those who install and maintain new and evolving technologies.

This extends to implementing new technologies and equipment in rail traffic control systems as well. The introduction of such changes as a *fait accompli* without the prior consultation with the employees directly affected creates situations where *ad hoc* emergency overrides must be undertaken to avoid accidents. Train dispatching employees have already experienced such situations on at least one carrier. Such overrides can be avoided when these systems are tested with dispatcher involvement prior to implementation.

Finally, the safety impact of automated track inspection technologies and their appropriate use must also be addressed in the TIP. Automated track inspections should be used only as a supplement to the current requirements for visual track inspections under Part 213. Automated track inspection technology should not be allowed as a substitute for safety-critical visual track inspections performed in accordance with 49 CFR 213.233. Automated track inspection technology should also not be leveraged as a means to weaken the remedial actions required under the provisions of the Track Safety Standards, 49 CFR Part 213.

Associated with these types of implementation problems are those carriers and owners of railroads who claim not to be carriers that interpose their concepts of technical advances in the name of public safety without discussion either with the FRA or Rail Labor. These potentially well-intentioned acts derail efforts to collaboratively and effectively solve problems and often exacerbate them. Any implementation of new technological strategies needs to take into account this particular problem to assure uniformity, efficiency, and the most effective solutions to common problems.

#### Bad Data: Garbage In, Garbage Out

The Labor Organizations are concerned about the effect of bad data and incomplete or inaccurate data to the process and goals of risk reduction. These concerns are based upon the fundamental reality that this RRP program, like all such safety programs, is necessarily based on data, and data has been shown over time, especially within in the rail industry to be consistently unreliable. GAO, OMB and other studies dating from at least 1989 have documented gross under-reporting of both injuries and lost time, due to injuries. See, e.g., GAO/RCED-89-109 "Railroad Safety-FRA Needs to Correct Deficiencies in Reporting Injuries and Accidents" April 1989, and House Subcommittee on Transportation and Infrastructure, "Review of Injury Reporting Practices in the Railroad Industry" Oct. 25, 2007.

FRA has acknowledged that the lack of a severity index in the current Harriman Award criteria is a contributing factor in the harassment of rail employees that report on-duty injury. In his April 14, 2003 letter to the Association of American Railroads, former FRA Administrator Allan Rutter stated: "...Those meetings resulted in a proposal to base the safety awards on a severity index that would give greater recognition to those railroads that were most successful in preventing serious injuries and fatalities. A severity index was devised that would separate the employee on duty casualties reported by the railroads into three levels of severity." Eight years later, the Harriman Award criteria still remains unchanged. The Labor Organizations believe that any hope of a cooperative risk reduction program and an improved safety culture should

include a more realistic safety awards system and the elimination of the current award-based incentive to harass an injured employee who reports, or attempts to report, a non life threatening injury.

The consistent criticism of FRA data-driven awards such as the Harriman is largely because the current system tends to award carriers who are carrying out the most radical programs of retaliation against accident/injury reporting which, of course, drives the statistics on reported accidents, incidents, injuries, and close calls down, certainly in the near term. The Labor Organizations have every reason to believe that there are safety and security issues that employees dare not discuss with carriers or even FRA, due to the extreme retaliatory atmosphere which exists within the industry today. The Labor Organizations encourage FRA to continue to pursue the direction identified in Administrator Rutter's April 14, 2003 letter to AAR.

To further rectify the suppression of accident/injury reporting, the proposed regulations must directly extend the confidentiality coverage discussed in Section E of the ANPRM, *Protection of Confidential Information*, to protect employees who provide safety or security information. This would include confidentiality of employees providing information to FRA, DOT, carriers, labor organizations, survey takers, consultants, and contractors performing RRP and RRPP functions.

Nothing in the new RRP regulations can be accomplished effectively in the absence of accurate data. The Secretary is granted broad statutory authority under Sec. 20118(a) to take all actions regarding confidentiality as necessary to effectuate the purposes and intent of the RSIA. This power includes both capacity to extend and establish confidentiality protections, and to initiate exception or limitations to such confidentiality where needed.

The "safety cultures" of the carriers, geared as they have been to an almost exclusively punishment-based structure, has created an atmosphere of fear and suppression which must be overcome in order to allow employees full participation and openness. Front line rail employees are the sole source of PRIMARY data, as opposed to secondary information.

Without real and credible confidentiality protection for employees in RRP as well as aggressive and credible whistleblower protection up front, the Secretary can hardly expect to accomplish anything beyond the usual pattern of the past. Short-term, surface level changes at the upper levels of management rarely trickle down to change anything where activities on the ground are concerned.

The RRP regulation should therefore contain an acknowledgement that FRA perceives serious deficiencies in the accuracy and reliability of safety data due to the existence of traditional and deeply imbedded safety cultures which permit overt or covert retaliation, intimidation, suppression of negative safety information, and dysfunctional abuse inherent to punishment-based safety programs. All initiatives and evaluations of safety success/failure are necessarily data-driven. With the existing data highly suspect and future data likely to be suspect as well, FRA must implement reforms to address those data issues in conjunction with RRP adoptions.

### Training

The context of training and training materials will be unique to each railroad's RRPP. Training issues will necessarily be based upon RRP and RRPP content, so the specific issues related to training should be addressed within the collaborative consensus-based process of Section 103(g). The Labor Organizations generally support annual training to reinforce the importance and commitment of all parties to risk reduction, facilitate knowledge transfer and understanding of the RRP and RRPP among all levels of the carrier, and allow for annual assessment of the program based upon employees' perceptions and self-critical evaluation of the program that should be part of any training and evaluation.

Initial training should be completed within 90 days of implementation. Recurrent training should be afforded annually in some cases, and perhaps at the same frequency as other FRA-mandated training in other cases. We believe that the content and frequency of training for each class and craft of employees is best addressed in the context of the "good faith and best efforts" consultation required under Section 103 (g) of the RSIA.

### Approval by FRA/Recordkeeping/Evaluation of RRP

The Labor Organizations suggest that all RRP and RRPPs be submitted for approval within six months of the effective date of the final rule and presupposes that the covered carriers have been actively meeting and conferring with Rail Labor in the consultation process well before that time.

Except for record retention requirements in other statutes or regulations that may be greater, all RRP-related documents and data should be retained for six years. This is critical in order to maintain context and to consider changes to the RRPP over time. Record retention burden would be negligible provided that railroads are permitted to retain such documents and data electronically. Data records must be retained in a format that facilitates analysis.

FRA tracks accident/incident data in five general causation categories: equipment; human factors; signal; track; and miscellaneous. Moreover, the agency's regulatory efforts typically target unsafe conditions based on the frequency with which a particular category, or subcategory, appears in the accident/incident data. Therefore, it is appropriate to utilize a similar methodology in determining the adequacy of a particular railroad's safety record, as well as in reviewing its RRP for compliance with statutory requirements.

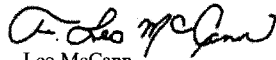
Any evaluation method must be robust enough to measure whenever the industry as a whole may be failing to address legitimate safety problems. If all railroads have failed to address a certain aspect of safety equally, or ignored it altogether, the industry average would be such that an individual railroad's performance would not deviate from the average. In this circumstance, using only the industry average could camouflage serious safety concerns. We believe it is FRA's mission to move the industry as a whole in a safer direction. To do that it must insist that the average or industry standard improve over time, as well as the safety performance of individual railroads.


Public Meetings


There should be, at minimum, three public hearings related to this ANPRM in the following locations: one in Washington DC, one in the Midwest, and one in the West. Additional public meetings should also be held at locations convenient for receiving comments from participants in the various C<sup>3</sup>RS pilot programs and the CAB and STEEL programs. Efforts should be made to accommodate not only live testimony, but lively exchanges of views of stakeholder representatives. Advanced notice of these hearings should be at least forty-five (45) days and ample time should be allotted to all key stakeholders participating in the public hearing(s).


The Labor Organizations appreciate this opportunity to provide these comments to the Advance Notice of Proposed Rulemaking in FRA Docket No. FRA-2009-0038.


Respectfully submitted,

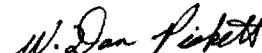
  
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**RAILWAY WORKERS HAZARDOUS MATERIALS TRAINING PROGRAM**

**NATIONAL LABOR COLLEGE**

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**EVALUATION OF**

**U.S. DEPARTMENT OF TRANSPORTATION**  
**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**  
**HAZARDOUS MATERIALS INSTRUCTOR**  
**TRAINING PROGRAM (HMIT)**

**2009 - 2010 YEAR PROGRAM**

**NOVEMBER 2010**

**PREPARED FOR:**

**RAILWAY WORKERS HAZARDOUS MATERIALS TRAINING PROGRAM**  
**NATIONAL LABOR COLLEGE**  
**SILVER SPRING, MD**



*Dedicated to the union men and women  
representing the nine participating rail unions of the  
Railway Workers Hazardous Materials Training Program  
who have lost their lives in the line-of-duty*



## ACKNOWLEDGMENTS

The Rail Workers Hazardous Materials Training Program was established and is administered by the National Labor College at the George Meany Campus, in cooperation with:

- American Train Dispatchers Association (ATDA)
- Brotherhood of Locomotive Engineers and Trainmen (BLET)
- Brotherhood of Maintenance of Way Employees Division (BMWED)
- Brotherhood of Railroad Signalmen (BRS)
- International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB)
- National Conference of Firemen and Oilers, SEIU (NCFO)
- Brotherhood Railway Carmen Division of the Transportation Communications International Union - International Association of Machinists and Aerospace Workers (TCU- IAMAW)
- Transport Workers Union (TWU)
- United Transportation Union (UTU).

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# RAILWAY WORKERS HAZARDOUS MATERIALS TRAINING PROGRAM

## EVALUATION OF

### U.S. DEPARTMENT OF TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION HAZARDOUS MATERIALS INSTRUCTOR TRAINING PROGRAM (HMIT - TRAIN-THE-TRAINER)

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**DOT Trainers Exchange Evaluation**

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**RAILROAD WORKERS HAZARDOUS MATERIALS TRAINING PROGRAM****U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION****HAZARDOUS MATERIALS INSTRUCTOR TRAINING PROGRAM (HMIT)  
TRAIN-THE-TRAINER COURSE EVALUATION****2009-2010**

*In just a short time from the onset of a new grant program, more than 200 regional peer trainers completed both 5-day Hazmat and DOT Hazmat Instructor Training. In turn, regional peer trainers provided training for well over 4,000 rail workers across the country, and they have specific training schedules to reach many thousands more. These newly trained regional peer trainers form a network of rail workers across the country, working in at least 46 states.*

**INTRODUCTION**

In-depth quality hazmat training for rail workers and community members is essential for saving lives and health. Already finishing its 19<sup>th</sup> year, the Rail Workers Hazardous Materials Training Program continues to lead the way in small group, hands-on classes taught by specially trained peer instructors, who are themselves full-time rail workers. Over 31,000 rail workers, who register on their own or through their union, have benefited from this training. The program represents a consortium of nine railroad unions, and rail workers from 49 states and the District of Columbia have completed training. (See map of trainee network in Appendix II.) Many courses are held at the National Labor College; others in the field. There are a range of hazardous materials classes lasting from four hours to five days, as well as DOT Security, DOE Radiological Transportation Awareness, facilitated on-line First Responder Awareness, OSHA 10, Disaster Site training, instructor training and training through rail-community partnerships. Rail workers also learn about incident command and how to serve as skilled support personnel in the event of an emergency or act of terrorism. The program maintains a web site, both in Spanish and English, with a wealth of information and refresher exercises.

Among the program objectives:<sup>1</sup>

- Ensuring that the highest possible levels of worker safety, public safety, and environmental protection are maintained during rail transportation of hazardous materials
- Minimizing the risk that hazardous substances will be inadvertently released into air, water, or soil during rail transportation.

Trainees come from Class I, short line, passenger and commuter railroads. Training is cross-craft, cross-union, and cross-company – maximizing the learning of each from the other. Rail workers leave the training much more familiar with placards, markings and shipping papers; with reading and interpreting the DOT *Emergency Response Guidebook (ERG)* and with the safety requirements for various hazard classes. They learn toxicology and about the physical properties of hazardous chemicals. Rail workers are better able to protect their own lives and health, as well as being able to keep safer their fellow workers and members of communities across the nation. Joint rail-community training, through the program, has improved the readiness of emergency response personnel to respond to rail Hazmat incidents.

#### **I. EFFECTIVE TRAINING INVOLVES PEER INSTRUCTORS AND A WIDE ARRAY OF TESTED CURRICULA**

Peer trainers are key to instruction of rail workers on how to respond safely and efficiently to accidents and incidents involving the transportation of hazardous materials. The rail program has used peer trainers and mentored them almost from the inception of rail worker training at the National Labor College. The program has 16 staff peer trainers, 4 associate staff peer trainers, and more than 200 regional peer trainers, at present, who are spread across the United States. (See map of trainer network in Appendix III.) The peer trainers come from a multitude of crafts and unions within the rail industry and all are full-time rail workers. The director of the Program himself has 30 years of experience as a railroader, along with his academic training. He was a staff peer trainer in the program for nearly 10 years before his promotion to Program Director. This strong legacy and strong national network has been strengthened significantly with the more than two hundred new DOT regional peer instructors.<sup>2</sup>

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<sup>1</sup> Rail Workers Hazardous Materials Training Program, National Labor College, *Fifteen Years of Documented Success: Rail Workers Hazardous Materials Training Program, 1991-2005*, Evaluation Draft Report, May 2006.

<sup>2</sup> Rail Workers Hazardous Materials Training Program, *Needs Assessment*, 2008. (The rail program had some regional peer trainers prior to DOT funding, but not nearly the national network of regional peer trainers that now exists.)

Besides more traditional classroom settings, the following are examples of the styles, models, and venues currently used and expected to be used throughout the program:

- Peer trainers take advantage of lunch time, breaks, and safety briefings to introduce concepts.
- Peer Trainers conduct training sessions at union meetings as well as regional and national union conferences. They run formal training programs whenever possible.
- Rail workers stay after hours to learn to use the *ERG* and receive other training.
- A staff trainer who works on a road gang meets with fellow gang members at night in a motel room and teaches, blending instructor-led teaching, with hands-on and small group activities, as well as on-line instruction via laptop.
- Staff trainer and regional peer trainer teach together. Workers go on-line or take CDs home to learn the 8 hour material. The on-line program is available 24/7.

In this DOT Train-the-Trainer Program (HMIT), a new model “tool box” was developed. A staff peer trainer/conductor, as part of her college degree work, developed a tool box that divides the awareness level training and security awareness training into 15 minute tool box segments. The idea is that one by one at safety briefings or tool box meetings, peer instructors can provide the requisite training without ever having to get release time for the rail workers being trained. This is a valuable model for combating the difficulties of rail workers getting release time for training.<sup>3</sup>

## **II. OVERVIEW OF THE U.S. DEPARTMENT OF TRANSPORTATION HMIT TRAIN-THE-TRAINER COURSE**

The numbers and varieties of hazardous materials are vast, and all rail workers need to be trained and ready in the event that they are first on the scene of a Hazmat event. The training and knowledge of rail workers can protect their own lives and health. It also protects the lives and health of those around them at work, and of those in the broader community.

Despite years of federal requirements, there are still major training gaps across the country. Most rail workers have not received 8 hours of quality training. The current Department of Transportation initiative to train peer trainers, who will in turn take the hazmat awareness training to workers at their job sites, is an excellent model to accelerate the knowledge of engineers, conductors, carmen, track and mechanical workers, signalmen, yardmasters, train dispatchers, and others across the country. Hazmat incidents can be avoided and small events can be contained to avert catastrophes. Lives will be saved, health preserved, and property protected.

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<sup>3</sup> Ibid.

Millions of lives and billions of dollars are at stake in efforts to improve rail safety and security. Quality training is key. Hands-on, small group exercises led by highly qualified peer trainers – supplemented by simulations, audio visuals, and group discussion – need to reach all who may be affected.

#### **A. The Course**

The Rail Workers Hazardous Materials Training Program's train-the-trainer course provides regional peer trainers with the skills and knowledge necessary to deliver DOT-required hazardous materials training at the awareness/familiarization level with a specific focus in the following categories of the 49 CFR part 172:

- Subpart C--Shipping Papers
- Subpart D--Marking
- Subpart E--Labeling
- Subpart F--Placarding
- Subpart G--Emergency Response Information
- Subpart H--Training
- Subpart I--Safety and Security Plans

The course also includes instruction in OSHA regulations, local emergency action plans, hazard recognition and identification, health effects, and how to use resources, as well as teaching techniques and principles of adult education.

Most training participants attended a 5-day hazmat training program as a pre-requisite to the train-the-trainer course. Those unable to attend the 5 day program were requested to complete the 8 hour awareness level training. Train the trainer courses begin on Sunday evening and continue through mid-day Friday. Training combines classroom instruction with small group exercises and practice teaching, lecture, discussion, and role play. Participants fill out both a pre-training and a post-training survey to gather data and determine the effectiveness of the train-the-trainer course.

During training, regional peer trainers participate in a small group activity and answer a series of open-ended questions about problems they face and actions they plan to take when they return to work with responses included as part of this evaluation report. Trainees describe serious dangers they encounter as well as serious security issues facing the railroad. The training, they say, changes their attitudes and increases their awareness and knowledge.

In addition to small group activities, documenting anecdotal experiences has been instrumental to the success of the Rail Program. In order to gather some insight about what may have led participants to their involvement in the Rail Hazmat program, new peer trainers are asked to take the time each day to reflect about incidents that they have witnessed or taken part in that may have been prevented or would have at least turned out differently had hazmat training been made available. In addition to the incidents and stories they document in personal log books, they also consider changes they have attempted or may attempt in the future to make in their local areas - changes related to their communities, union locals or workplaces.



At the conclusion of training, train-the-trainer course participants complete a written program evaluation which is designed to gather information on training implementation. Questions, asking for participant reaction to training content and instruction, include: Were instructors prepared and knowledgeable? What was your most favorite/least favorite part of training? What would you like to see changed? How would you rate (1-10) overall training program? Participants also are asked for comments and/or suggestions about the training course.

Following are some highlights from these program evaluations:

During the grant year 2009-2010, the Railway Workers Hazardous Materials Training Program trained nearly one hundred rail workers in five DOT HMIT Train-the-Trainer programs.<sup>4</sup> Rail workers came to the National Labor College from at least 29 states across the country for 5 days of hazmat instructor training. These individuals work in at least 39 states, the District of Columbia, and Quebec. (See Table III-Q.4 and Q.5 and Appendix III – Network Map for more details.) They came from eight rail unions. (See Table III-Q.1.)

Those that came to training were highly motivated. While 90 percent had been very interested in the subject before training, 99 percent were very interested by the end of the class. (See Table I-Q.1 and Q.2.)

Nearly 90 percent of the trainees had previously received either no DOT-required Hazmat training sponsored by their employer or less than 8 hours of training. But almost 20 percent had been rail workers for 16 years or more. (See Table III-Q.2 and Q.6.) Ninety-five percent of trainees had previously received no DOT-required security training sponsored by their employer, or less than 8 hours of security training. (See Table III-Q.7.)

When asked why they wanted to become peer trainers or why are you here, trainees said: (See Table II.)

- *"I believe the railroads have downplayed the risks and training of its employees, placing at risk workers and community."*
- *"I want to make a difference in the safety of my co-workers, community and myself."*
- *"I want to take part in equipping fellow railroaders on how to use tools and training to be aware of what potential dangers they may face and how to avoid them."*
- *"Help educate brothers and sisters about the dangerous work environment that the company doesn't really tell you about."*
- *"... because it is my belief an educated workforce is a safe workforce. If labor sets the standard of safety, labor will lead the way in the workplace. I want to be a part of that."*

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<sup>4</sup> Completion of the Rail Program's five day hazmat course is a prerequisite to the train the trainer course.

- *"I would like to help educate my fellow workers about the hazards that we face on a daily basis. I truly believe knowledge is power, and we deserve the right to know how to do so within our industry."*
- *"There needs to be someone in place to handle all the questions and concerns about Hazmat..."*
- *"I don't feel as if the carrier provides enough training. If the opportunity presents itself to further my education, I try to take advantage of it. In turn, I can share that information with all I come in contact with."*
- *"In hopes that the information and education will make a positive influence on safety, and it might save a life."*

Virtually all of the trainees thought the trainers did a good job teaching and were well-prepared to teach their modules. (See Table I - Q.3 and Q.4.) Nearly all of the trainees who responded to the survey felt they developed a positive communication process with their mentor trainer. (See Table I-Q.6.)

Pre- and post-training surveys indicate large gains in confidence and teaching skills. Trainees learned how to teach about first responder responsibilities, placards, health effects of hazardous materials, about the use of the *NIOSH Pocket Guide* and the *Emergency Response Guidebook*, and how to teach co-workers to read Material Safety Data Sheets. They are also poised for action – to share their new knowledge with fellow workers, to report leaks and missing placards, to ask for PPE, to verify shipping papers, to recognize security risks and to communicate risks associated with hazardous materials labels and marking. .

Learning public speaking and presentation skills were among the favorite parts of the course. (See Table I-Q.7.)

Virtually all of the trainees said they would recommend the course to other workers (See Table I-Q.9.) and, in fact, some already had. One participant reported: *"...I got to talk at the union meeting today about the course at NLC. I have two people who want to do it."* Another said: *"Over the next several union meetings, I will be given a chance to get others involved in the course at NLC and give some classes during the union meeting!"* Yet another explained: *"This year we had two individuals from our terminal come down to the NLC with my urging. I hope that as the number of Peer Trainers grows here in Buffalo, we will be able to further develop a viable Hazmat program."*

Suggestions for improvement focused on a desire for extra days to learn more as well as more time to prepare and present lessons. Trainees wanted even more hands-on training. (See Table I-Q.10.) Other recommendations included:

- Provide more PowerPoint training
- Have field trip exercises
- Have comparison videos of teaching techniques – at the beginning vs. at the end of training.

When trainees were asked, “What can the Rail Program do to help support your efforts in the field?” their answers included: (See Table I-Q.11.)

- Provide resources and material for the field work
- Continue to offer refreshers and/or advanced classes
- Keep the communication ongoing among all regional peer trainers when they return to the field
- Provide support in trying to convince our managers how important it is to get the workers trained and time off
- Provide email updates on what other trainers are doing and on the results of our training
- Provide updates on current Hazmat incidents
- Have a monthly newsletter to all peer trainers
- Continue with outreach in the field
- Form a calling circle. Staff trainers can call regional peer trainers to check on their progress and answer questions

Approximately 65 percent gave the course the highest mark possible on a 10 point scale. Overall the trainees gave the DOT HMIT Train-the-Trainer course a 9.7 ranking on a scale of 10. (See Table I-Q.12.)

#### **B. The Trainees**

During the grant year 2009-2010, the Program trained 94 rail workers in five DOT HMIT Train-the-Trainer programs and 21 in an advanced trainer program. Trainees belonged to the Brotherhood of Locomotive Engineers and Trainmen; the Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; the National Conference of Firemen and Oilers, SEIU (NCFO); Brotherhood Railway Carmen Division of the Transportation Communications International Union - International Association of Machinists and Aerospace Workers (TCU-IAMAW); the American Train Dispatchers Association (ATDA); the Sheet Metal Workers International Association; and the United Transportation Union. One member of the American Federation of State, County, and Municipal Employees (AFSCME) also attended. (See Table III-Q.1.) Half had worked for five years or less for the railroad; 80 percent for fifteen years or less. (See Table III-Q.2.) Approximately two-thirds of the trainees were 40 years old or younger. (See Table III-Q.3.)

Prior to the DOT HMIT Train-the-Trainer course, well over half percent of the trainees had previously received no formal training to be a trainer and many had faltering confidence in their ability to teach. Confidence levels to lead a classroom awareness program increased after training. For example, before training approximately 10 percent of trainees responded that their confidence level was tentative. At the end of training, only 3 trainees still felt uncertain. (See Table III-Q.8 and Q.9.)

### C. Gains in Teaching Techniques

Training included sessions on teaching techniques, regulatory updates, online course facilitation skills, advanced PowerPoint instruction, and practice teaching sessions. Participants learned about effective teaching techniques and principles of adult education including learning differences among adult learners.

Before DOT training, 30 percent or more had never used a flip chart, PowerPoint, or an LCD projector. (See Table III-Q.11, Q.12, Q.13 and 14 and Chart 1.) More than 35 percent had never presented safety and health information at a union meeting or safety briefing, and nearly 60 percent had never taught the *Emergency Response Guidebook*. (See Table III-Q.15, and Q.16 and Chart 1.) After DOT training, they all had experience in each of these areas. They wanted even more experience in public speaking and in sharpening their presentation skills. (See Table III-Q.23.)

Trainees commented:

- *"Thanks for ... giving me the chance to sharpen my facilitating skills and learning how to present the Hazmat awareness course."*
- *"This program has helped me to lose my fear of public speaking, and I have definitely raised my awareness level. Thanks!!"*

When asked about the most important things learned during training, confidence and learning necessary teaching skills seem to be the main things. (See Table III-Q.17.) One trainee said:

*"I thought I knew how to stand and speak, but I found out that I didn't have a clue! Because of this training and well scripted lesson plans, I feel I have the confidence and skills to present this training with ease."*

After training, all rail workers who went through the DOT Train-the-Trainer program felt that they had gained the confidence and skills to provide training to co-workers. (See Table III-Q.19.) Their comments include the following:

- *"I have learned the materials and skills to hold a good training class."*
- *"Because of this training, I have all the tools in front of me now to follow a plan and get the information to my fellow co-workers."*
- *"I feel I can take this information and prepare a classroom environment."*
- *"I was able to pick up pointers from all sessions. We learned that even the full-time instructors get nervous."*
- *"I know now where my weaknesses in public speaking are and how to correct them."*
- *"This class has really got me to start talking in front of people. I am still nervous but with practice that will go away."*

**D. Safety and Health Training Plans**

Because of their knowledge and leadership, peer trainers, in their roles as rail workers, can be especially effective in instituting work place change and improved safety and health. Participants were asked to share what they hope to do in the next year to provide hazmat training to their co-workers. Here are some of their responses: (For more details, See Table III-Q.24.)

- *"After this training, I think we have endless chances to tell about the program at many locations: work, union meetings, communities and schools."*
- *"I would like to present to the carrier and also my peers at work and hopefully reach almost all of the 200 employees that we have."*
- *"I really want to deliver this training to large groups and spread knowledge to as many people in my industry as possible."*
- *"...Try to gain the confidence of management for better opportunities to open up for training presentations."*
- *"Become a vital part of my "carriers committee" and be able to give this information out during safety marathons on company time."*
- *"Continue to train my co-workers and union friends in the Hazmat awareness during shifts, pre-shift meetings, union meetings, etc."*
- *"Start an in-depth Hazmat training program on my service unit."*
- *"Become location safety coordinator."*
- *"Attempt to partner with the carrier to present this during rules class."*
- *"Contact state legislative representative, carrier, Congressmen, and Senators, on transportation communication issues, explaining what we do and how to have people trained."*
- *"Talk to local fire department and local managers to present training on the job, also local schools."*
- *"Make this presentation to as many employees as possible. I will try to get time at work."*
- *"Have one-on-one conversations with co-workers."*

Below are just a few examples of other training plans - plans motivated by the DOT HMIT regional peer trainer program:

1. One new peer trainer, upon returning home, wrote of his training plans: *"I finally got the go ahead from the [company] to start a class. I am still working on the curriculum, but I will get an hour to hour and a half of Hazmat. The [company] is paying me for my time, and I will be a peer trainer in San Antonio. I will be teaching other things beside Hazmat. I should get it up and running in about a week or two. I will let you know more when I get it going and get the names of students who will be in the class."*
2. Another new peer trainer sent an email saying: *"Just last week I talked to the manager in charge of maintenance of way, and he will allow me to come in during his safety meetings held once a month and give a short presentation until they have completed the course. He unlike most other managers seems to be receptive to teaching his employees what to do if they are ever in a situation where they would be a first responder or they would need to recognize what chemicals were leaking."*
3. A peer trainer in March 2010 reported: *"A few days ago, I had my local president and local chairman talk to the Superintendent ... to arrange a possible meeting with him to discuss some type of formal training attached to the safety training already being done... I will give him a week and then make contact. They both said he was "very" interested...."*

#### **E. Training Accomplishments**

Since the first funding year in 2008, 203 regional peer trainers completed both 5-day Hazmat and DOT Hazmat Instructor Training. In that short time, regional peer trainers were able to provide training for four thousand more. The entire trainer cadre had specific training schedules to reach many thousands more. In addition to more formal training, many reported doing informal training in yards or with train crews.

Below are just a few examples reported:

- *"Thanks again for the support and guidance you bring to this program. Since last August when I attended the Trainers Exchange, I've found that working one on one with my fellow crew members seems to work the best for me. I have shared my positive experience with my co-workers, and I try to bring the "Gift of Enlightenment" to each crew I encounter. Since the engineers I work with are no longer required to carry the Emergency Response Guide, I make it a point in our on-duty job briefing at the start of every shift that I DO carry the ERG, and I show them where I keep it in the end pocket of my grip. This always leads to a discussion on how to use it and the wealth of information it contains. I've just completed my bi-annual rules class. The company officer giving the class had a set time limit for each section. When we got to the HazMat, emphasis was placed on Placement and TIH/PIH, RSSM Hand Off. I broke into an ERG discussion and because of time constraints had to cut it short. I was later asked by several other*

conductors about more information. Again I shared the positive experience that I have had. I counted up 43 more engineers since last August....”

- “We ... have been running safety marathons [every 3rd week of each month] for our crew base out of our safety site committees. We run for 48 hrs. non-stop with 3 two man crews at 8 hrs. each meeting with our yard and road crew covering all aspects of safety from hazardous material handling to situational awareness training. (your surrounding environment). We will see approx 30 per shift x 3 shifts x 2 days for a total of 180 people in a 48 hr. time frame. Every other month is dedicated to a safety site committee meeting with management where we go over safety concerns for our division. We in Vancouver are committed to safe work place, and will continue to do so into the future. Without the training received from the NLC, this task would not have been possible.”
- “The class was well received by the new hires as well as the manager of rules, and the manager of safety. All 18 of the students requested a toolbox and thanked those involved for their commitment to a safer workplace. They also wanted me to thank you for the HMPP's which I handed out to each of them as well. I don't know where this will go in the future, but for now, there is a buzz in the air over how and what material I covered as being refreshing and easy to digest.”
- “I was fortunate enough to have the opportunity to present the tool box information at last month's local meeting. They receive the information with open arms. One of our retired members was present at this meeting. He is an investigator for one of our states designated legal councils for the UTU organizations. He said that he was going to get with him to see if he would like to sponsor a session, so that we could get the word out. At this point I'm waiting to see when he can get this session set up. I have had the privilege to speak with several of my co-workers to expound on the hazmat awareness, and they have stated to me that this is the best information that they have ever had relating to hazmat rules.”
- After training, a locomotive engineer who has also served as a Local Chairman with UTU for the last eight years reported: “I would like to share with you the knowledge and appreciation this program has offered to me... I have never experienced something like this before. These classes were so detailed on the different hazards we deal with in our environments, and it is amazing how the railroad I work for never seemed to tell me about the dangers of working in this industry. You get the feeling that they don't care about me or my family's well being. Since I have attended these classes, I talk to all of my fellow co-workers about these issues telling them of the different dangers and encouraging them to be more involved in their job duties when it comes to handling hazmat materials. I have a union bulletin board, and I hang up different information every couple of weeks, and a lot of curious employees have contacted me to learn more. At the college, I received several different training tools to share with others, and they are so well put together and very simple to understand, everyone has enjoyed them...”

- A trainer reported spending a couple of hours with a coworker at the away from home terminal at the hotel going over the “Tool Box”. He also spoke with the road foreman at [Name of Yard] and showed him the tool box and the small booklet. He added: “*The foreman mentioned that I should become a supervisor and asked if I was interested. I politely declined so as to not jeopardize the possibility of training at [Name of Yard]. I left a few more booklets around the yard offices..., but I am running low.*”

Other examples include: (A full list is available on request.)

Location	State	# Hours	# Rail Workers Trained	Training Activity
Jasper	AL	1 hr 40 min	6	Un 1 & 8 - Safety Mtg / w/ FC
Phoenix	AZ	4 hrs	20	UTU Regional Meeting - Un 1-10 SH
Tucson	AZ	1.5 hrs	1	Student Handbook
California	CA	30 mins.	22	HMPP
El Monte	CA	30 min	7	Union meeting - program/ERG
Fontana	CA	30 mins.	10	Haz Awareness
Indio	CA	2.5 hrs	18	Toolbox/safety meeting
Los Angeles	CA	1.5 hrs	1	10 units of pamphlet - one on one
Washington	DC	1 hr	26	BLET Legislative Meeting
Hialeah	FL	30 mins.	7	Toolbox - Haz Rec/Communication
Covington	GA	2 hr.	10	Haz Awareness
Georgia	GA	15 mins.	39	Haz Awareness
Blue Island	IL	8 hrs	18	New Hire Training - IHB RR
Blue Island	IL	8 hrs	17	SH; HMPP
Champaign	IL	1 hr	25	Haz Rec/Overview
Chicago	IL	8 hrs	7	Company time
Schaumburg	IL	20 min	41	BLET State Leg Bd Conv; 1st responder overview - Toolbox and SH
Indianapolis	IN		15	Haz Awareness Overview - Toolbox and SH
Merrillville	IN	4 hrs	6	Haz Awareness - Merrillville FD Cadet Training
New Castle	IN	1 hr.	18	Rail Security
Edgerton	KS	1 hr	12	Union Meeting - Haz Awareness
Pittsburgh	KS	50 min	10	SH - Un #5 - Health Effects - Union Mtg
Pittsburgh	KS	1 hr	16	SH - UTU L. 763 Union Mtg
Addis	LA	1 hr	12	Toolbox (incl fire chief-Addis,LA)
New Orleans	LA	8 hrs	8	UTU Regional Haz Awareness
New Orleans	LA	2 hrs	55	UTU Regional Haz Awareness
Silver Spring	MD	8 hrs	33	DOT Hazmat Awareness
Silver Spring	MD	1 hr	8	Pamphlet - Recognition/Response/ERG
Monroe	MI	2 hrs	6	Pamphlet - Recognition/Response/ERG



Location	State	# Hours	# Rail Workers Trained	Training Activity
Kansas City	MO	8 hrs	16	BLET Regional Meeting
Kansas City	MO	1 hr	47	BLET
Kansas City	MO	8 hrs	14	DOT Awareness
N. Kansas City	MO	55 min	14	SH - Un #5 - Health Effects - Union Mtg
New Albany	MO	2 hrs	15	SH Un1 and 8 w/ FCs - Roadmaster Safety Mtg
Amory	MS	1 hr	8	SH Un 8 w/ FC - Safety Marathon TYE
Meridian	MS	1 hr	4	1st responder/ERG/Security
Asheville	NC	8 hrs	27	Haz Aw - UTU Regional Convention
Raleigh	NC	4 hrs	7	NS - company time; Awareness, ERG, Tox, Hazcom, Haz Rec -- ppts
Rocky Mount	NC	1 hr.	23	Haz Awareness
Spruce Pine	NC	4 hr.	10	Haz Awareness
New Jersey	NJ	1 hr	33	ERG & NIOSH PG
Las Vegas	NV	1 hr	119	Haz Awareness
Reno	NV	10 min	56	Haz Aw Overview; BLET National Convention; SH and Toolbox
Rossford	OH	2 hrs 15 min	10	BMWED 2024 Union Mtg - ERG, Placards, DOT #13, recognition, G'ville
Chattanooga	TN	30 min	19	Toolbox - First Resp Aw
Erwin	TN	3 hrs	16	ER to Rail Incidents
Memphis	TN	1 hr 40 min	14	Un 1 & 8 - Safety Mtg / w/ FC
Houston	TX	1 hr	5	UTU Local 1886 meeting
Houston	TX	1 hr 15 min	16	1st responder/ERG
Kirby	TX	1.5 hrs	7	1st responder/ERG - UP company time
Livingston	TX	45 min	33	Un 1 Toolbox
Pasadena	TX	50 min ea	15	ERG - Pamphlet
Pasadena	TX	1 hr	19	Student Handbook - Hazard Recognition / ERG
San Antonio	TX	1.5 hrs	13	1st responder/ERG - UP company time
San Antonio	TX	1.5 hrs	4	Un 6, 7, SH - Haz Rec; Haz Com; SH ppt
San Antonio	TX	1.5 hrs	6	1st responder; ERG - toolbox and ppts
San Antonio	TX	1.5 hrs	10	Un 6, 7, SH - Haz Rec; Haz Com; SH ppt
San Antonio	TX	1.5 hrs	7	Un 6, 7, SH - Haz Rec; Haz Com; SH ppt
San Antonio	TX	1.5 hrs	7	1st responder; ERG - toolbox and ppts
Bristol	VA	4 hrs	20	Haz Aware NS/Transcaer (FDs and VFDs)
Bristol	VA	4 hrs	38	Haz Aware NS/Transcaer (FDs and VFDs)
Virginia	VA	1 hr	11	UTU Union Mtg - First Resp Awareness
Centralia	WA	30 min ea	8	Un 9 - Resources - work time
Tacoma	WA	1 hr 20 min	11	Tacoma Bi-Monthly Safety Mtg - ERG
Hazel Green	WI	1 hr 15 min	12	Haz Awareness
Sheridan	WY	1 hr	28	Haz Awareness

**F. Increases in Awareness and Hazard Identification Build Motivation to Improve Safety Back at Work: Value of Training**

Awareness is key to helping rail workers stay safe. DOT trainees reflected on past experiences and how dangers were ignored. These trainees clearly understand the value of the training. With prior training, their responses to the incidents described would likely be different. (For more details see Table IV.) Below are just a few examples mentioned:

- *"We were notified that we had a derailment in the yard. We didn't take time to get a ERG nor did we inquire what was in the derailment. If it had been some dangerous chemical, we would have had a bad experience or possibly would not have this opportunity to even write this. I had two other guys with me and the most senior conductor never mentioned anything about the hazardous information. Being exposed to this training makes me aware that we need to know when to react, and how to react."*
- *"...after successful completion of the DOT HMIT Train the Trainer Course for Hazardous Materials Awareness in February 2010, I have become more aware and thankful for the hard work that is placed into this program at the National Labor College at the George Meany Campus in Silver Springs, MD. I have seen myself grow over the years as a railroader from 2005... I learned a lot just by being around the yard, running the road and going in and out of industries, but it was not until last October of 2009, that I was realized after completing the Hazmat Emergency Response ... Training that I was on the thin and short end of the stick when it came to Hazmat Materials and Knowledge! I had several eye opening thoughts all through these series of training sessions as I personally glanced back over my 5 years just to think of ways that I could have been effected by something so serious! I actually appreciate the knowledge and education I received here because the carrier that I work for does not go this detailed and specific with Hazmat Training as a matter of fact, they don't even touch the surface compared to the National Labor College programs."*

He then added: "Education is extremely important to me and my well being because it makes me look at situations and circumstances in a more detailed and educated way. Now, I am capable enough to handle a situation, talk to someone who has not had the experiences I have had and simply able to educate my fellow coworkers and community about the dangers associated and involved with Hazardous Materials, and I owe that all to the National Labor College."

*I personally pray and hope this becomes mandatory for each and every hazmat worker to attend and participate in these programs because I know personally there are hundreds of men and women in the work force that are just like me, walking around with books and material in the bag and had no clue how to utilize the materials in the case of an emergency. Thinking only, man I am qualified to do my job, but not educated enough to stay alive and survive a serious incident. Please, I plead and beg to the readers of this log, make this a mandatory program and help educate the world on things before they occur, don't wait till they occur to find out only a small, less than half portion of the work*

*force really knows what is involved and what to do when disasters occur! An educated and informed employee is an awesome tool and asset to any company!"*

Poor emphasis on safety leads to high risks for workers. Below are just a few examples:

- *"A carman was working third shift in the train yard and was a couple of tracks away from a leaking tank car. At the same time there was a second tank car leaking in another part of the yard. This same carman called in about the leak he came across. The management told him that they knew of the leak and that he was in an unaffected area and to keep working. He continued working and became ill. Management did not respond to his calls due to being involved in the first incident. They dismissed his calls. He had to call for an ambulance by his own cell phone. No corrective action was taken."*
- *"Second shift carmen are working out of the shop. A hazmat car is leaking adjacent to the shop. They told them to close the doors and "evacuate in place." The air handling units pumped the vapors into the building. Three carmen went to the hospital."*
- *"The more knowledge I receive, the more I am appalled at the lack of concern exhibited by the rail carriers..."*
- *A peer trainer gave examples of how chemical safety training could have changed a situation. "In one case, a crew was riding with their window open in the locomotive. As they passed a weed sprayer, the spray came through the open window and doused the crew. The dispatcher actually sought me out on this one as I was leaving (boy did that make me feel good or what) and asked what I would do. I told him to have the crew wash themselves as thoroughly as possible. (We provide cases of 8 ounce bottles of water in the locomotives.). I told him to have someone call the Maintenance of Way Dept. and find which weed sprayer was being used, to seek information from the MSDS and to transmit that information to the affected crew. The next day, I checked back. The crew, right after I left called the dispatcher, told him they had wiped their arms off and was ready to go. I can't see this happening with anyone who had attended one of the courses at NLC."*

The trainer added a second example: *"...a crew who had 3 sets of consist paperwork for their train and therefore had no concrete knowledge of the contents or the order of their cars, FIFTY SEVEN MILES into their trip.*

And a third: *"...a train with a potentially dangerous situation being moved... an odor was sickening the train crew. This train was moved approximately 30 miles through a whole bunch of little towns into the rail yard because the trainmaster knew that someone would be there to inspect the train. (The fumes as it turned out were coming from a load of telephone poles, not even considered hazardous cargo).*

And last: *"... a tank car was found to be venting a cloud of something. The dispatcher was "ordered" to move this train 26 miles into a CITY where an inspection could be done. I am getting goose bumps as I think about these situations."*

Training can also motivate participants to seek further education:

- *"I am returning to school this fall and will earn a MS degree in transportation planning. I want to be able to educate private and municipal planners in considerations of hazardous materials near or within neighborhoods and transportation corridors. I have also been a community volunteer for Community Emergency Resource Teams, Red Cross and Search and Rescue 0 and look forward to an additional avenue to assist my neighbors and brothers."*

#### **G. Trainees Perspective on Terrorism Vulnerabilities**

There is a lack of adequate Hazmat and security training for rail and rail transit employees. Training could save lives. What is the preparedness of U.S. workers? A survey by the International Brotherhood of Teamsters (IBT) -- that represents railroad engineers, trainmen, and track workers -- found that 72 percent said they had not received any training within the previous twelve months on terrorism prevention and response.<sup>5</sup> IBT reported at the 2010 DOT Trainers Exchange that while there has been some improvement in key areas, the overall picture painted by the first High Alert report<sup>6</sup> remains the same:

- "lack of security along railroad tracks and in rail yards, with easy access to rail equipment;
- minimal, inadequate security training for employees who would potentially be on the front line of any terrorist attack on the rails involving hazardous materials;
- skeleton maintenance of way and train crews and remote control technology replacing an experienced team of engineers and trainmen, even when freight trains are carrying hazardous material;
- and a disturbing lack of progress in improving security along the rails at points of vulnerability, including locomotives, tracks, bridges and tunnels."

Even across survey areas that show improvement, rail workers continue to report high levels of vulnerability and significant gaps in rail security. Despite efforts by the rail industry and despite progress in key areas, the IBT survey concludes that workers don't believe the rail carriers have significantly improved the security of their operations. Survey results suggest that gaping holes remain in securing rail yards, rail equipment, and critical infrastructure, and in providing quality security-related training to rail employees. Workers continue to report an unacceptable level of vulnerability, even across survey areas that show improvement, putting at risk rail employees and U.S. residents who live near rail yards and lines.

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<sup>5</sup> International Brotherhood of Teamsters (IBT), "High Alert 2: Workers Warn of Security Gaps on Nation's Railroads," Key Findings, 2010.

<sup>6</sup> International Brotherhood of Teamsters (IBT), "High Alert: Workers Warn of Security Gaps on Nation's Railroads," 2005.

These results were corroborated by several years of similar surveys by the Rail Workers Hazardous Materials Training Program.<sup>7</sup> On Wednesday March 28<sup>th</sup> in 2007, Rep. Stephen Lynch (D-MA) affirmed this saying, "...Many of our rail systems have emergency response plans, but they're worthless if rail workers don't know they exist. It's time to establish clear guidelines for emergency training, and prepare our rail workers to respond to a terrorist attack."<sup>8</sup>

The Rail Hazmat Program curriculum has continually expanded, to include discussions of terrorism and weapons of mass destruction, simulations of incident command, small group exercises on rail safety and security. After taking the 5-day hazmat program and the DOT Train-the-Trainer, trainees were well aware of the vulnerability of the nation's rail system to terrorism activity. They identified specific threats and made specific suggestions on how to make the country and the railroads safer. As the eyes and brains on the front lines, these individuals are very knowledgeable. But they were nearly clueless about plans their railroad employers may have made to make the railroads more secure and what to do in the event of an emergency.

Rail cars, tracks, yards, and basic infrastructure are not sufficiently secure. They are not only poorly protected from possible terrorists, but often in poor maintenance, making them more vulnerable to accidents.

One trainer's comment shows the importance of security training. He says:

*"This training has opened my eyes of all the hazardous chemicals that we use at work. I never thought about the dangerous chemicals that our community carries everyday thru freight trains and trucks making my community vulnerable to possible terrorist attacks. I am thankful to DOT for allowing people who care to learn and teach others. Thanks for making us aware of the Hazmat information."*

Another trainer said:

*"Just recently one of the crews, that went through one of my crew room presentations, was in a situation to where the railroad was trying to make them leave the terminal without proper paperwork, and they were a key train. This crew used the information and training I had bestowed upon them to demand proper paper work and told the trainmaster what exactly was required. This to me is a success story because without knowledge this crew could have put themselves and the general public in danger because they just did not know what they were carrying and something could have happened to their train and would not have known what to do."*

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<sup>7</sup> From annual evaluation reports of the Rail Workers Hazardous Materials Training Program.

<sup>8</sup> Congressman Stephen F. Lynch, "House Approves Lynch Amendment to Improve Security Training for America's Rail Workers," News Release, March 30, 2007, [http://www.house.gov/list/press/ma09\\_lynch/HR1401.html](http://www.house.gov/list/press/ma09_lynch/HR1401.html).

#### **H. Training Makes a Difference**

A well-trained and knowledgeable workforce is the first line of defense to keep a minor event from becoming a major hazardous materials incident. In most rail emergencies, rail workers are first on the scene. Hazmat training can make a difference in preventing accidents and exposures. At an early stage, DOT HMIT training, along with the prerequisite Hazmat training has already made a difference.

Below are a few examples reported during the July 2010 Trainers' Exchange at the National Labor College:

- Nearly 95 percent of 69 regional peer trainers said they had become more active in safety and health themselves at work since taking the training. One is now a full time safety coordinator. One became a safety captain and another a local safety officer. One is the local chair of his union and others reported either becoming a safety and health rep or joining a safety committee.
- Nearly 65 percent had seen safety changes at work or in their union since becoming involved in peer training. In one case, after 67 years, a fire alarm system was installed. Trainers reported more Hazmat material being discussed in job briefings and more people asking questions; more people are thinking about Hazmat and more workers now leave their work boots at work instead of taking them home.
- Almost half of regional peer trainers say that as a result of DOT HMIT training there has been an increase in the use of personal protective equipment at work. Examples include: a coworker requesting a respirator, use of dust masks during wind events, a coworker asking for different gloves, more employees use PPE when handling batteries, a co-worker washing work clothes separately. Fifteen percent knew of examples where the employer had ignored or refused to provide PPE requested.
- Almost 45 percent said they had made either established or improvements to emergency action plans. Examples included convincing the company to include workers in EAP training and drills, getting the EAP into the crew room, getting signs on the roofs of buildings and doors to help identify them, getting maps at local yard entrances, getting a shower in the MW depot.

Incidents occurred where regional peer trainers believed there was improved response:

- Employee contacted OSHA about a problem with gloves. OSHA came. Proper gloves were provided.
- When crews were asked to spot ethanol tanks, they requested risk information from management
- Employee reported leaky tank enroute to Altoona. Train was stopped
- Rail workers just trained a few days earlier, were instructed to leave terminal without paperwork. They remembered their training and got the paperwork.

- Stopped the welding of a single wall tank car loaded with explosive material. Owner of the car transloaded car and had car scrapped.
- Spotting a diesel fuel leak, the crew charged with moving equipment knew better and did not get close before looking at the ERG.

Already, trainers have dozens of examples of where training had made a difference. Below are just a few more:

- After training and review of the local emergency action plan (EAP), a trainer helped the company rewrite its EAP.
- Hot ash trains have covered hoppers.
- Everyone at a yard, where a regional peer trainer did training, knows what the alarms and bells mean and where the evacuation points are located
- Ventilation in storage areas has increased with installation of more exhaust fans
- Weed sprayers brought concerns and a bulletin was implemented to stay clear of spray
- Trainer was allowed to help inspectors in correct placement of hazardous cars.
- Workers asked the roadmaster to display out EAP, and now all can see it.
- Co-workers know how to use the ERG.
- Chlorine leak in the yard was reported.
- Crews do not depart without proper paper work.
- Crews know proper isolation distances.
- More people are using respirators on ballast trains.
- Trespasser trying to take photos from dangerous locations was reported.
- Windsocks were installed.

Students in the DOT HMIT training program kept personal logbooks, and recorded instances of where training had made a difference. A list of these can be found in Table IV. Below are just a few:

- *"I was working on a yard job in California. I heard over the radio that a conductor that had just yarded his train notified a leaking tank car with a sulfuric acid placard on his train. The yard master had just given our crew instructions to do work on the track next to where this car was located. I notified the yard master we would hold off on the move until I researched the chemical." He was irritated. "I had attended training at NLC in Maryland, and if I hadn't, my crew and I would have gone out and done the work without question. I saw that sulfuric acid is an inhalation hazard, skin irritant, and deadly. It turns out there was a serious leak. Hazmat crews were called out and the yard was shut down until the area was decontaminated. Without my training, my crew, myself, and many others would have been exposed to the leak. These types of incidents happen every day in railroad yards."*

- *"While working at a company that receives chemical tank cars I noticed that some of the empty tanks were not placarded. With the information I received while attending the hazmat awareness, I knew, even though the tank cars were empty, they still needed to be placarded. I notified the shipper and the situation was taken care of."*
- *"For years as a railroad worker, I worked dumping stone with no PPE offered to me by my company. Only after having the hazmat training at the National Labor College and complaining to my manager was I able to get the PPE needed to do this job safely."*
- *A trainee, who works in Oak Island, NJ and whose job moves approximately 100 cars of hazardous materials, reported: "The train masters and yard masters... try to rush you out of the yard without checking your paperwork. I looked through my paperwork and found cars that needed special handling and were out of train order. The training I received allowed me to look through my paperwork and determine that there was something wrong with not only my paperwork but my train. The training also allowed me to not be bullied by management. After proofing my guides and instructional tools, I was vindicated and allowed to make my changes to run the train..."*
- *An engineer from Nevada reported: "I attended the rail hazmat training last spring, and I am so happy I did. Through the knowledge I have gained from this class, we now have an emergency action for my rail yard and a wind sock in place. I have also passed on some of the information to my coworkers to help them better understand the dangers and precautions we need to take in this industry when it comes to hazmat. I think that this program has helped save countless lives and hope to learn more in the future. Thanks."*
- *A locomotive engineer from Buffalo, New York shared the following email: "After my training at the NLC, I decided to get involved in helping fellow railroaders become more aware of the hazards we face every day at work. Not only did I find the training at the NLC prepared me to speak to my peers with confidence and authority, but I found my peers coming to me for advice on safety and operating rule issues. For the first time in my 15 years as a Locomotive Engineer, I felt that I was finally able to make a difference in ensuring my Brothers and Sisters made it home not only safe at night, but, also made it home without potential discipline reprisals for following rules or asking questions. He also added: "...As a locomotive engineer working road assignments, I do not have access to many people at one time to which I can give a class. My time to talk about safety and Hazmat is most often one on one with a conductor or maybe at the hotel with a fellow engineer or two. I understand that when you are validating your programs at the NLC, quantitative data is essential, however, what I find to be the most rewarding is just talking with a fellow railroader about the ERG (Orange Book) while waiting at a signal. It is still difficult for me after a one on one talk, to pull out a sign in sheet or ask if I can include them in my training log. For this reason, possibly I am not able to depict a true representation of the people I am able to touch with my training. I tell you this not to undermine memorializing training events, but in order to illustrate what I think happens every day when program graduates speak to co workers informally, leave a couple Hazmat pamphlets at the sign in counter, or stop and answer a question in a non-intimidating manner that cannot often not be found when dealing with a Trainmaster."*



*Although my experiences as a graduate of three courses at the NLC may not offer much quantitative data for the bean counters, I hope that the qualitative information can deliver at the least, an amount of self satisfaction that your program is reaching everyday railroaders through people like me. I feel that the faint echoes of the NLC's Hazmat program have begun to be heard here in Buffalo, and with the continued tenacity of future graduates we have begun a firm foothold on safety. I am proud to have graduated from what is certainly the finest rail safety course in our nation."*

- Another peer trainer shared an event that had occurred at his home facility which opened an opportunity to share the information taught at the National Labor College, with all of his fellow employees at Montana Rail Link: *"... during our morning job briefing, I was instructed to begin removing signs at my facility that identified places of safety in the event of an emergency. After a brief discussion with the manager informing him of OSHA's requirements for an Emergency Action Plan, I was told by the head of our building department that "we don't operate under OSHA" and then ordered to remove the "Safe Haven" signs. It is only because of the training received at the NLC Hazmat Training Program that I continued to contest the decision and went to a higher authority within the company. After a quick review of my home facilities Emergency Action Plan, it was discovered that it not only wasn't in compliance with OSHA regs but excluded the most basic information required to provide even a safe egress from the facility. Prior to this event, I had been informed that no formal training by me was to be performed while on duty to equip my brothers and sisters with the most basic of information about hazardous materials. Effective today, and because of the events on December 30th, I will begin peer training during our morning job briefings and have been asked to train the entire signal department system wide... Thank you again, for all the good that you are doing for all of our brothers and sisters across the country."*
- A switchman and conductor in St. Louis reported: *"...on August 15, 2010, I experienced my first Hazmat incident in the [Name of Yard]. After dinner, my foreman and I went back up to begin switching again. As I passed by the tracks 13 & 14 switches, I smelled a strange strong odor. I immediately got on the radio with my foreman and told him to follow me up to where I was and that I smelled an odor that wasn't there before. When he arrived he said he smelled something also. We left the RCO engines where they were and contacted the yardmaster immediately stating what we knew. We headed downstairs to the yard office where the yardmaster began to try and find out what tank cars were near that vicinity and what they contained. He couldn't find any "loads" that were of any concern, but I immediately brought up the fact that "empties" can still carry 300+ gallons of whatever was previously in the car. He began to look a little more thoroughly then. Peer trainer [Name] was also in the yard that night yarding a train and was riding a shove past me as he heard everything on the radio. Our first instinct was to look at the wind socks. No real wind though, so we got out immediately. We notified the trainmaster of the incident and suggested that maybe the fire dept. should be called or whoever is in charge in our area of handling the hazmat situations. The trainmaster proceeded to go up in the yard and investigate for himself after we warned him of the odor and that we had possibly determined that it was anhydrous ammonia. Superintendent was in that morning, so he was also notified by [name of peer trainer] and me. We then began to go through the ERG and asked the superintendent if he had*

*looked in the NIOSH guide. With the response of, "What's NIOSH?" [name of peer trainer] and I began to teach them about the guide and how useful it is. He then said, "You are the guys who went to hazmat school aren't you?" We both sort of nodded and smiled. A few hours later the hazmat pros were on site and closed the vent on an empty tank. Luckily, nobody had any long term exposure, and everyone appears to be ok. My first incident and it was a scary one. I have a wife and child at home. You begin to question a lot of things about your job after something like this occurs. I also think we're a little bit closer to getting our 8 hour course to teach now also. We've been approved by the company to train at safety marathons already."*

#### **I. THE REGIONAL PEER TRAINERS TAKE TRAINING TO THEIR REGIONS**

Over 70 percent, of 69 regional peer trainers responding at the 2010 Trainers Exchange,<sup>9</sup> said they had done regional training since taking the DOT-sponsored train-the-trainer course. But, less than two-thirds had formally reported this training to the Rail Program staff. Trainers discussed ways to make administrative requirements and reporting easier. (See Appendix I for this information and for the details associated with the discussion in this section of the report.)

The training by regional peers took place from Louisiana to Idaho. It lasted from minutes to hours. It was conducted on site in the yards, in gang trucks and at union meetings, in cafeterias and crew rooms, in the cabs of locomotives and in local fire stations.

Nearly 80 percent of trainees said they had done informal training, much of it related to teaching the ERG. These informal venues included job safety briefings, a Hazmat booth at a union picnic, talking with supervisors and union officers; even, at a union golf tournament. Other locations included lunch rooms and "everywhere on the job." Trainees also share information with family and friends. Besides gains in awareness and life-saving knowledge, trainers cited work place improvements including emergency action plans, emergency response plans, wind socks, emergency showers, washer and dryer for cleaning contaminated work clothes, and more personal protective equipment.

Nearly 85 percent of the regional peer trainers surveyed at the Trainers Exchange had formal plans for delivering training in the future, beginning in July 2010 and scheduled over the subsequent 12 months. Those who did not have formal plans said the major obstacles they faced included: needing to "climb the authority ladder" and gaining permission from their company to do the training.

#### **Four Specific Examples of Formal Stand-Alone Training**

Throughout the grant year, regional peer trainers who completed the DOT HMIT train-the-trainer program at the National Labor College, returned home and provided Hazmat training to their work colleagues. Some was informal; some was incorporated into formal safety meetings. Some was stand-alone formal training. Four examples of stand-alone formal training were

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<sup>9</sup> A total of 88 people participated; this number included 69 regional trainers, 15 Staff Peer Trainers, and 4 people from the ICWUC-DOT program. Of these only 69 responded to the survey.

classes held in July and August 2010 in Raleigh, North Carolina, Asheville, North Carolina, and Phoenix, Arizona, and a fourth class held in Miami, Florida in April 2010.

➤ *North Carolina and Arizona classes.* Every single trainee who attended and completed an evaluation form said he/she would recommend the training to others. Most rated the training as excellent and the average score, on a scale of one to ten, for each class, ranged from 9.3 to 9.8.

Trainees spoke of their new knowledge of using the Department of Transportation's *Emergency Response Guide*. They also spoke of their new knowledge of the importance of personal hygiene and increased information about the chemicals with which they work. Most had learned valuable information about vapor pressure, flash points, and chemical toxicity. They specifically commented on the value of learning about FRA/OSHA jurisdiction issues, about shipping papers and how to read the ERG and MSDSs.

Nearly all trainees who responded said they were very interested in the subject material, and that the peer trainers were well prepared and did a good job. Some of their comments:

- "Great class. Very informative."
- "I highly recommend it for all."
- "Very interactive."
- "Discussions were interesting, thought-provoking and helpful."
- "Wonderful presentation and informative in a condensed period of time. I particularly enjoyed the participation, class projects, and critical thinking."

Suggestions for improvement included: developing a section on security, teaching the ERG to firefighters, more handouts, more visuals, and longer training. They commented on the need for fire extinguishers on all locomotives. They felt that more rail workers should receive training and that it should be offered in many different locations.

One of the classes had an added benefit, as one of the trainees was the administrative assistant to the international president of a rail union. That president, at a union convention, praised the work of those involved with the program, mentioned the staff peer trainers by name, and spoke of the need to expand the program.

➤ *Miami class.* The eight-hour Miami class was held in the maintenance-of-way department. Eight MOW employees attended. The trainers used a first responder small group exercise as an icebreaker, involving everyone in discussion and problem solving. The modules of the awareness class were presented as well as DOT Chart 13. Several workers commented on the importance of asking questions about the commodities involved in a derailment before rushing in to start cleaning up. Referring to a recent derailment in the yard, during which a tank car nearly went into a canal, several workers talked about how lucky they were that it was only vegetable oil and not a hazmat tank. And they noted that the discussion on car shapes would have helped put them more at ease when they approached that derailment, since they would have been able to identify the car as a low-pressure tank.

Following the class, the peer instructors received a number of compliments and many thanks for providing the class. The following day, the road master – who had not participated in the

training – reported that he had heard “a lot of good things” and said that he would like to schedule another session with another group of his men. He was pleasantly surprised at the response from training, saying that there had been some grumbling when he first assigned the men to attend. A track welder, who was in the office when the roadmaster made these comments and who had participated in the class, chimed in that he really appreciated learning how to use the DOT *Emergency Response Guide*.

#### **J. Continuous Program Improvement and Continuing Education**

The Rail Workers Training Program is committed to continuous improvement – of its curriculum, trainers, and program generally. Several activities assure that the program will continually grow stronger. The staff of the Rail Workers Program at the National Labor College continually works to improve curriculum -- developing improved learning modules and program materials. As new elements are developed, they are shared with peer trainers. In addition, an advisory board meeting occurs every year in which all the programs of the Rail Worker Hazardous Material Training Program are reviewed and discussed. The DOT program is now an important part of this meeting. Attending advisory board meetings are government officials, officials of the National Labor College, peer trainers, program staff and consultants, and representatives of the participating rail unions.

Three specific examples of vehicles for providing continuous improvement are discussed below:

##### **1. Advanced Training Program**

The advanced training course is a follow up to the basic DOT Railway Workers Train-the-Trainer course. It offers participants the opportunity to enhance their teaching skills and allows them a forum to exchange experiences and ideas with other trainers. Participants learn methods for designing effective teaching outlines. In addition, they expand the range of techniques they use and learn how to write their own teaching materials. Leading a discussion, practice teaching, all with critiques, is emphasized.

In September 2010, twenty-one regional peer trainers came to the National Labor College for Advanced training.<sup>10</sup> Collectively they gave the week long program a 9.3, on a scale of 1-10. Sixteen of the 20 responding ranked the program a 9 or 10. Ten gave it a “perfect 10.”

Of the 20 trainers who attended the advanced training course, fifteen had already done formal training – either through the railroad or thru the union. Some had done both. The other five, as well as many of the other fifteen, had done informal training. All felt that the week helped in teambuilding amongst the regional peer trainers.

They had some specific suggestions for how training could be improved. Two trainers felt the practice teaching critiques could be improved to avoid negative consequences. They urged critiques to be more in the format of constructive criticism, positive reinforcement and helpful hints. One trainer wanted help developing a strategy to break through the walls the rail companies set up, and asked, “How can I get them to let me teach?”

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<sup>10</sup> Twenty of the 21 responded to the survey.

What additional training did attendees want? They were divided between wanting more of a focus on teaching techniques versus more of a focus on Hazmat expertise. Several trainers said that they thought there was still a need to master the fundamental Hazmat knowledge and get more fine tuning of their skills and knowledge. Two suggested that they be allowed to go through the 40 hour Hazmat training again to reinforce mastery of the material. Some wanted more chemistry. Others wanted to focus more on the theory of adult learning, get more practice teaching and critiquing, and master PowerPoint. One wanted to sharpen his research skills.

Trainers had some requests to the program, so that they could do a better job. Two wanted access to a projector for training. One trainer wanted to be able to give out ERGs. Another wanted business cards. Resources that trainers want include: continuous updating of information, information and visuals on a CD – including pictures, and a better website or social site for regional peer trainers to stay in touch. There was a request to get Moodle up and running and to have resources to offer hazmat awareness training at a state level.

## 2. The Trainers' Exchange

At the end of the program year, the staff peer trainers and regional peers met to discuss "Lessons Learned." They also had upgrade training and briefing sessions from officials of the Department of Transportation.

Peer trainers of the Rail Workers' DOT Hazardous Materials Instructor Training Program met July 18-20, 2010 at the National Labor College in Silver Spring, Maryland. The exchange marked the end of the second year of training funds provided by the U.S. Department of Transportation. This section summarizes evaluation findings as expressed by the rail peer trainer participants.

A total of 88 people participated; this number included 69 regional trainers, 15 Staff Peer Trainers, and 4 people from the ICWUC-DOT program. Additionally there were multiple guest speakers and presenters.

Workshops and training sessions were conducted on the following subjects:

- Hazmat Transportation Safety (with officials from the Federal Railroad Administration)
- OSHA Current Affairs (with OSHA official)
- Importance and Effect of the Training Program (with officials from government and unions)
- Network Building for Effective Training
- Overcoming Obstacles and Techniques that Work (with adjunct faculty from the National Labor College)
- Evaluation and Administrative Procedures (with adjunct faculty from the National Labor College)
- Sleep Deprivation (with staff peer trainers)
- Chlorine Emergencies in Rail Transportation (with official from the Chlorine Institute)

- Global Harmonization of Communication (with staff peer trainers)
- Alternative Training Platforms (with software developer)
- High Alert Part 2, Security Gaps on our Nation's Railroads (with union official).

The rail peer trainers came from a range of rail craft unions. (See Table VI.) Some had been peer trainers for more than 15 years; others for only a few months. Some had a significant amount of classroom and rail yard teaching experience; some had very little. All were committed to making rail work less hazardous – to protecting both rail workers and community residents. They had important experiences to share, and they took classes to refresh their knowledge and to learn new information.

There was nearly unanimous agreement that the Trainers Exchange helped the peer trainer group become more of a “working-interconnected group.” Participants wanted even more interaction, suggesting that in the future the small groups change more often. Some wanted team building exercises. They wanted to interact more across craft lines. They wanted more trainers’ exchanges. They also wanted to focus on regional team building and working in groups with people from their geographic region to strengthen regional networks. (See Table VII.)

The trainers were also eager to build their skills. They were excited by the new interactive program presented by the software developer, Y-Stress. They were excited about the seminars on chlorine and on sleep deprivation. They also mentioned new learning in the areas of teaching techniques and preparing for training sessions. (See Table VIII.)

The enthusiasm for the trainers exchange was strong. Trainers raved about individual sessions and about the event in general. Overall comments were laudatory. (See Table XII.):

- *“This course helped me in turn to go to UTU Regional at Phoenix and present two units/modules with a greater confidence and knowledge.”*
- *“Great training. Very good and much needed information that needs to continue to be delivered until we can change the health and safety culture of our employers to actually be safe!”*
- *“The program is great and making unbelievable leaps. The amount of information shared has been tremendous.”*
- *“Thanks. You have been filling gaps that I did not know I had.”*
- *“To all the instructors both peer trainers and NLC instructors of the mini-classes we attended, I say they were all professional. I can't say enough about the classes... I went away with more arrows in my quiver to deal with the message which keep resounding in my head "Emergency Preparedness". He added: "I couldn't have been in better company". They were all eager to learn, teach, and meet new people no matter which Union we belong. The Comradeship to a common cause could be felt throughout this event. I made a few valued friendships and an unmeasurable amount of memories both educationally and personally... I hope that our collective input at this conference was of*

*value to further this program. For I believe moving this information into our perspective areas is of value to ourselves, and communities. Some say that "Safety training is non-profitable;" that may be true but if we can save one life from these training classes I feel it is worth it. Because, guess what that life I save might be my own."*

Those who attended the Trainers Exchange gave it high ratings. In five areas questioned, 78 respondents gave the program a rating of between 4.4 and 4.7 on a scale of 1-5 (See Table XIII.):

- Information presented will help me improve my skills as a trainer (4.4)
- Sessions were well organized (4.7)
- Sessions were presented so I could easily understand the information (4.6)
- The presenters demonstrated knowledge (4.7)
- I learned new information (4.7).

All were enthusiastic about the Trainers' Exchange and wanted it to be an annual event.

### 3. The Blackboard Site for Peer Trainer Support and Communication

Through the DOT Program, the Rail Worker Program at NLC developed an online Blackboard site to improve communication among staff and regional peer trainers. In addition, every six weeks a Hazmat quiz or "Test your Knowledge" quiz is posted on Blackboard for regional peer trainers. This quiz is required to be completed by all Staff Peer Trainers by the end of the third week from posting. On the fourth week, answers are be posted on Blackboard for regional and staff peer trainers to review.

Graduates of the DOT HMIT Train-the-Trainer program were surveyed, at the July Trainers' Exchange, to better understand how to serve, electronically, the peer trainer community.

Over ninety percent of the 78 respondents to a survey of the Trainers Exchange, use the internet to search for health and safety-related information. Over 30 percent use it at least weekly to find health and safety-related information. (See Table XIV.) The types of information that trainers most often wanted from the web were materials for people they work with, requirements for OSHA/FRA compliance, train-the-trainer activities and materials, OSHA citations for specific worksites, and checklists for hazard identification. (See Table XIX.) While 5 percent to 15 percent said they might want web-based safety and health information weekly or more often, the most frequent response was "occasionally." In each of 11 categories for which information was solicited, 10 percent to 30 percent said they would never want to find the information on the web. The two largest areas of non-use (at 20 and 30 percent respectively) were medical information and technical data for engineering controls.

The Online Blackboard Network for regional peer trainers was used less often than the web generally. While over 80 percent had used the network in the past year, core tools were used monthly or more often by less than 20 percent of the group. These core tools included curriculum updates, discussion board, toolbox resources, on-line course modules, and external

links. (See Table XV.) Still, for those who used it, three-quarters said that the information they found was “just right” (See Table XX) and 60 percent said they would “absolutely” use it in the future; a full 92 percent said they would “probably” or “absolutely” use it in the future. (See Table XXIII.) Over 70 percent of those responding said they found the information they wanted (at the Blackboard site) quickly and without frustration, but nearly 30 percent expressed frustration. (See Table XXI.)

Many said they would like online reporting forms, embedded in the NLC peer trainer Blackboard system, to submit numbers of people trained and training hours, and for class registration. They were also interested in getting up-to-date statistics and breaking news through the site. (See Table XVII.)

When asked what would encourage more frequent log-in to the trainer network, respondents asked for easier log in, easier navigation, and training on accessing information on the Blackboard network. (Table XVI.) Exercises for the trainers to learn the network might increase participation, but over 40 percent said that they really were not interested in exploring other links (outside Blackboard). They wanted to find what they needed on the Blackboard site and that was all. (See Table XXII.) What trainers found the most frustrating about the Blackboard site was the difficulty in navigating around the site and the fact that sometimes the site was not available. (See Table XXI.)

Many suggested that the website should be more like facebook or twitter. Some suggested a regular email to the trainers.

#### **K. Rail Workers Praise the Training Program**

Students consistently praised the program, its staff, and its trainers for the quality of materials and their presentation – and wished that more of their colleagues would have the opportunity to study how to be DOT peer trainers through the National Labor College. Among their comments (See Table V for more comments.):

- *“This is one of the best training programs offered that I have had the pleasure to attend. It was very comprehensive and presented in a very friendly, non-threatening environment. Without funding this program may, simply, no longer be possible.”*
- *“Glad to see a program in place to help workers to protect themselves, coworkers and communities on potential dangers because the carriers do not.”*
- *“It was a solid week of training. Everything has its place in the course.”*
- *“It was a great experience. I am eager to get back home and begin instructing my fellow workers with this wealth of information.”*
- *“Awesome material – needs to be mandatory for each and every railroad and hazmat worker.”*
- *“Fantastic experience. Ready to spread the knowledge!!!”*
- *“Great course, it opens your mind to the many things I took for granted before.”*



- *"Great course. I can't wait to comeback. The interaction between mentor and students is great."*
- *"Keep doing what you are doing! You are on the right track!!!"*
- *"... The instructors did a terrific job. Thanks!"*
- *"... all the courses offered by the Rail Workers Hazmat Training Program are first rate. Every instructor is professional and knowledgeable in their presentation. I have attended many courses over the years and my gold standard has always been my Air Force training. I can honestly say, that the Instructors I encountered at the NLC meet or exceed the level of instruction I encountered in the Air Force. I commend you and your staff for creating such a positive group of role models for the nation's railroaders...."*
- *"I feel that the faint echoes of the NLC's Hazmat program have begun to be heard here in Buffalo, and with the continued tenacity of future graduates we have begun a firm foothold on safety. I am proud to have graduated from what is certainly the finest rail safety course in our nation."*
- *"...The staff and instructors should be credited with passing along the passion and the knowledge for how to handle hazmat materials. It without a doubt has spilled over to me, and I have been able to reach several people because of the job they have done in teaching me."*
- *"...Thank you for all your support and for giving me a voice to be heard."*

### **III. SUMMARY AND CONCLUSIONS**

The U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Instructor Training Program is relatively new for the Railway Workers Hazardous Materials Training Program. Completing its second year of funded program activity, 203 peer instructors have been trained, and over 4,000 rail workers across the United States have received some degree of hazardous materials awareness training. As a result of the DOT HMIT Train-the-Trainer program, trainees identified literally hundreds of ideas for improving teaching techniques and their safety and health on the job. Trainees' awareness of hazards was heightened. Trainees left motivated to go back to their home work places and share their newfound knowledge with their colleagues.

The impact of the DOT HMIT Train-The-Trainer Program at the National Labor College has been profound. Not only are there over 4,000 more trained rail workers as a result of the 203 regional peer trainers who completed the DOT HMIT training, but changes have occurred across the country – with increased awareness, increased activism, spills reported, shipping papers obtained, emergency action plans written and training on these plans provided, dangerous trains stopped and cars transloaded and scrapped. There are reports of workers changing their behavior and of managers being more responsive to requests for improved safety. The risks of major incidents are being reduced; workers are helping to reduce their exposures to hazardous materials. Employees, both labor and management, are learning more about resources available to them to identify hazards and teach them to work more safely. If all of this can happen in two short years, over time the future for a new and stronger culture of safety in the rail industry may be within reach.

The Rail Workers Hazardous Materials Training Program is “ahead of the curve” in providing training and setting up an infrastructure for future training to meet the critical need for safety training as the volume and number of hazardous materials rail shipments escalates significantly in the coming years.

Witness Statement of Bruce Bennett  
(Submitted for the Hearing Record)  
President of Stage 8 Locking Fasteners  
San Rafael, California

Before the

Subcommittee on Railroads, Pipelines, and Hazardous Materials

U.S. House Committee on Transportation and Infrastructure

Regarding

Railroad and Hazard Materials Transportation Programs:  
Reforms and Improvements to Reduce Regulatory Burdens

Mr Chairman:

I would like to address a railroad safety issue that could ultimately affect the lives and safety of thousands of people. In 2007, the Federal Railroad Administration reported that there were some 1,876 derailments of US railroads. A quarter of those were caused by mechanical problems with the train itself, signal failures and miscellaneous factors. The remainder were caused by track defects and human factors. My company, Stage 8 Locking Fasteners, is working closely with the Wheels, Axels, Bearings, and Lubrication (WABL) Committee of the American Association of Railroads (AAR) on safety devices it has developed to prevent future derailments, focusing on the failure modes of freight rail cars, as well as passenger rail cars. We found through testing that vibrations associated with railroad use regularly loosened fasteners (e.g. nuts and bolts) in railway rolling stock, track and bridge structures. As a result, we have developed a safety system that would ensure against fastener loosening.

Just recently, Stage 8 made two very impressive “hands-on” demonstration of their new safety system to individuals in the Offices of the Federal Railroad Administration (FRA), specifically in the Motive Power and Equipment Division within the Office of Safety Assurance and Compliance, as well as to the Deputy Associate FRA Director. The end result of those meetings was the recognition that the safety solution presented to them was indeed an “excellent solution” to preventing future derailments. However, in both meetings, the FRA claimed “their hands were tied” because they had no regulatory power to influence the disposition of this type of equipment and that it was the job of the railroad industry to police its own. The FRA currently mandates that cars be removed from service if an end cap screw is loose, however it is my understanding that there is currently no way to check for loose cap screws prior to failure, and that currently this requirement is not enforced or enforceable.

We are aware that the AAR has adopted a Manual of Standards (industry voluntary standards), designed to ensure safe operation of railroads and rail cars. One of its standards does mandate the torque values when applying the cap screws on the various end caps, on freight car wheels, and additionally mandates the breakaway torque that should be there when they remove the wheels for servicing. It is highly questionable the extent rail car companies

are complying with the maintenance and replacement policies under this AAR industry standard.

In the best interests of railroad safety, I would request that, in developing the rail safety title of the broad safety legislation being developed by the Committee, that legislative authority be included in the bill instructing the Federal Railroad Administration to commence in a rulemaking that would incorporate the current AAR safety standards as part of the agency's mandatory rules to enable the FRA to enforce these standards using regulation 49 CFR 215.115. Railroad companies and companies that own and operate freight and passenger rail cars would be required to comply with specific torque values for the end cap screws at installation, during service, and upon removal.

I would also like to request that reports and studies substantiating the nature of the problem addressed in my testimony and attached to my statement also be included in the hearing record.

Statement for the Record

Ross B. Capon, President & CEO  
National Association of Railroad Passengers

Hearing: Railroad and Hazardous Materials Transportation Programs: Reforms and Improvements to  
Reduce Regulatory Burdens

Before the  
Subcommittee on Railroads, Pipelines and Hazardous Materials  
Committee on Transportation and Infrastructure  
United States House of Representatives

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Chairman Shuster, Ranking Member Brown, and Committee Members, Thank you for the opportunity to comment for the record in this hearing.

**Development of the Passenger Network:** We believe intercity passenger trains should be included in the surface transportation reauthorization law. We of course also want to see a stable, multi-year source of funding. This will allow the private sector to gear up and invest in passenger rail—both in the manufacturing industry and as operators. The U.S DOT has a commitment from 30 foreign and domestic rail manufacturers to locate or expand operations in the U.S. if selected to do high-speed-rail work—meaning good-paying jobs for American workers. The National Surface Transportation Revenue and Study Commission recommended annual investment in passenger rail of \$9 billion.

Our 40-year vision for passenger trains in the U.S. calls for bringing passenger trains to over 100 metropolitan areas and many smaller communities that currently lack service.

We generally support the written testimony of Amtrak's Joseph McHugh for this hearing. However, we are concerned that efforts to change the liability law could, in AAR President Hamberger's words, "end freight and passenger railroad cooperation in new passenger rail operations that involve freight-owned assets."

The cost of rail investment must be put in the context of the alternatives. Population growth and improving standards of living will drive up the demand for transportation. We must invest heavily to expand transportation capacity, as transportation is the "oxygen" that supports our way of life. Without it, commerce dwindles and quality of life deteriorates. The consequences of not expanding transportation capacity are unthinkable. The issue is not whether we will spend large sums but how we will spend them. Investment to accommodate more fast trains for moving people and goods is not expensive when compared to the alternatives of building similar capacity by expanding roads and airports.

We strongly support development of the Northeast Corridor (NEC), but not to the exclusion of the rest of the nation. Only 18% of the US population lives within 25 miles of an NEC Amtrak station. The other 82% of Americans also need and want the choice of fast, frequent, safe and affordable train service.

The solution to limited capacity and resulting high fares is new funding dedicated to accelerate the acquisition of new passenger train cars and locomotives. These would be not just for the NEC but for service nationwide – including current and new corridor services as well as for the longer runs that link regional services and make trains a choice for more city pair trips. By adding cars to existing trains, new frequencies to existing routes and new routes to fill critical missing links, new equipment will attract new revenue, reduce operating costs and increase fare box recovery.

**Buy America:** We strongly support rebuilding of the industrial capacity in the U.S. that will support the growing intercity and commuter passenger train network we believe the country needs. In that regard, and in a 'deregulatory' spirit, we ask consideration of a 'sliding scale' approach to Buy America compliance. That is, rather than simply forbid a product which falls below a particular percent of U.S. content (e.g. 100%, 90%, etc.), impose an import fee that rises as the U.S. content falls. The goal would be to keep the pressure on manufacturers to develop U.S. capabilities while minimizing the extent to which proscriptive rules drive up costs for U.S. carriers.

Obviously, in the spirit of flexibility, we would maintain the three exceptions. That is, the provision may be waived if

- the domestic product is—by a certain percentage—more expensive than an identical foreign-sourced product,
- the product is not available domestically in sufficient quantity or quality, or
- waiver is in the public interest.

**Build America Bonds:** We support restoring this program and making it more rail-friendly. As originally authorized in the Recovery Act, it subsidized 35% of a state or local government's interest payment on the issuance of debt, either through direct cash payment from the Treasury to the issuer, or through a tax credit from Treasury to the bondholder. While BABs could generally be used to finance surface transportation infrastructure, its structure limited the program's ability to help states finance High Speed & Intercity Passenger Rail grants. This was due to the unique public/private nature of most U.S. passenger train operations, coupled with the expectation that any surplus revenue generated from a high-speed/intercity passenger rail facility should be used to pay off construction debt.

As structured, passenger investments from BABs could only happen if the infrastructure financed was 90% owned and operated by a governmental entity, or if 90% of the debt was paid back with public revenue. A state would essentially be required to operate its own railroad in order to qualify as a government use. A service operated by Amtrak is considered a private business use. Given the likelihood of private business use, a state would then have to assume at least 90% of the debt obligation and could not use more than 10% of any revenue generated from the facility to pay-off or secure the debt.

The Internal Revenue Code includes a class of “qualified” private activity bonds, including one for high-speed intercity rail facilities, but the Recovery Act excluded all private activity bonds from receiving BAB assistance. The best way to ensure that high-speed/intercity passenger rail projects are eligible under a future BAB program is to establish the high-speed intercity rail facilities bond as an eligible obligation under the Build America Bonds program.

We also recommend:

- Modifying the definition of high-speed intercity rail facilities in the Internal Revenue Code by lowering the speed requirement from 150 to 110 mph to encompass a broader range of projects and ensure consistency with the definition of ‘high-speed rail’ in PRIIA; and by including rolling stock (the current definition specifically excludes rolling stock).
- Considering whether other modifications to benefit freight rail projects would be appropriate.

**Support for Railroad Industry Recommendations:** As a charter member of the OneRail Coalition, we have been supportive of many positions taken by the Association of American Railroads and by the American Short Line and Regional Railroad Association, both of whose presidents testified at this hearing. Some positions that we share include:

- Support for extending the short line rehabilitation tax credit (45G);
- Support for “SHIPA” legislation extending the current freeze on longer and heavier trucks to the entire National Highway System;
- Opposition to H.R. 763, which would *raise* the federal weight limit to 97,000 pounds for combination trucks that add a sixth axle;
- Support for improving the RRIF program so that it will not remain, in Mr. Timmons’ words, “stuck where it has been for 10 years,” that is, badly underutilized;
- Support for some form of liability relief for railroads regarding their obligation to carry toxic inhalation materials. In this regard, note that the FAA Aviation Insurance Program offers below-market rates for airlines’ war risk, hull loss and passenger, crew, and third-party liability insurance. The program appears to be permanent, that is, its sunset date is routinely postponed; the current expiration date is September 30, 2011;
- Opposition to retroactive provisions in any new passenger-related liability law; and
- Support for retention of the Section 130 grade crossing “set aside” program.

Thank you very much for this opportunity to present our views.

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**HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE****April 7, 2011**

**Testimony of Phyllis Wilkins  
Chairman of the Board  
United States Maglev Coalition**

**MAGLEV IN THE US: OPPORTUNITIES & LESSONS FOR ARRA**

Chairman Shuster and Members of the Committee, thank you for the opportunity to submit this testimony on behalf of the U.S. Maglev Coalition. I am Phyllis Wilkins, and I chair the Coalition. I am also Executive Director of Maglev Maryland.

The US Maglev Coalition ("the Coalition") is made up of public and private sector companies and individuals, agencies and labor unions, all committed to the development and deployment of high-speed magnetic levitation (maglev) transportation technology in the US. Properly deployed, maglev will provide economic stimulus to the country by providing new jobs, new technologies, provide environmental advantages, mitigate congestion on roads and in short-haul air routes and provide faster, safer, more efficient travel. And it will do all this without transferring an unsustainable continuing debt to those regions that choose to deploy it.

In my testimony today, I hope to impart some important facts about maglev and why it should be deployed in specific regions of the US. I hope also to illustrate to the Committee that there are important lessons for today's high-speed rail (HSR) program in past federal maglev statutes.

**HSR IN AMERICA**

Transportation advocates were thrilled when the American Recovery and Reinvestment Act of 2009 ("ARRA") provided billions for a new national high-speed rail program. In two short years, however, this enthusiasm has diminished considerably, and the HSR program is now criticized as perhaps symbolic of unnecessary government spending. As a result, a number of recipients have done something practically unheard of, they turned that money back. Why? Because the Administration has ignored some critical elements that are required to make HSR a success.

**SPEED & COSTS**

First, few of the projects chosen by the Administration for funding actually represent true high-speed rail. In 1997, the US DOT released its report "High Speed Ground Transportation for America" which defined High-Speed Rail as 150 mph and above. Speeds from 90 up to 150 mph were labeled Accelerail. Maglev was defined as able to achieve speeds in excess of 300 mph.

When the ARRA funding was announced, projects could qualify for high speed rail funding if they had the potential to reach 110 mph. The American public, which welcomed the notion of transformative HSR and maglev such as exists in Europe and Asia for years, felt misled. Numerous USDOT-funded projects had speeds that didn't come close to even the lower 110 mph threshold. Without true high-speed, ridership would materialize very slowly, if ever, leaving annual operating deficits not covered by federal funds to fall squarely on states to shoulder. And those states, calculating the decades of unfunded liabilities to their citizens, began reassessing the true costs of these projects. Some returned federal grant awards to the USDOT.

Unused to a truly multimodal transportation economy, the US traveler will only access a new form of transportation – HSR – if it saves time and is convenient. The USDOT approach did not guarantee that the projects it funded would meet either criterion.

#### **PRIVATE SECTOR INVESTMENT**

Slower speed, less convenience and attractiveness reduces profit potential to a project, thus weakening inducement for private funding interest. Before ARRA, this committee passed the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), which mandated that projects be able to form public/private partnerships. The 1997 report, which was a congressional mandate, also examined the commercial feasibility and partnership potential of projects all across the country. Projects were rated on their ability to be self-sufficient and ability to attract private partnerships.

It is clearly a liability of today's HSR program that the Administration did not take more lessons from existing statutes or their own 1997 report for High Speed Ground Transportation or the PRIIA bill when mapping out the ARRA HSR Program.

#### **ROADMAP FOR SUCCESS**

In 1998 Congress passed the Transportation Efficiency Act for the 21<sup>st</sup> Century – or TEA-21 - which contained a blueprint for deploying Maglev in this country. The Maglev Deployment Program required that successful projects must be:

- Nationally significant;
- Capable of expanding into a regional system;
- Produce revenues in order to be self-sufficient;
- Provide technology transfer creating US jobs;
- A public/private partnership.

Not only did the 1998 Maglev Deployment Program fund seven projects for study, the FRA produced a Programmatic Environmental Impact Statement (PEIS) which found that with intensive analysis of the environmental impacts, the FRA recommended the selection of an Action Alternative and then produced a Record of Decision supporting the

advantages of the technology and the decision to take two projects forward. Despite all the good work by the projects and the FRA findings, this program has been left on the shelf.

All of these requirements should have been the basis for selecting any project to receive ARRA funding for high-speed rail, but sadly most of the projects did not meet the majority of these standards.

#### **NATIONAL STANDARDS VS. REGIONAL SOLUTIONS**

With its emphasis on creating jobs and industry, the Administration has perhaps missed an opportunity to bring state-of-the-art transportation systems to the US on a regional basis. The United States is large country; we connect the distances from our east and west coasts by airplane, not by train, for our passengers. Thus there is no reason for a passenger train that operates in the NorthEast Corridor, or in Florida, or in Chicago, to necessarily be interoperable with those operating in California. The size of the US market allows for regional diversity.

For a country where freight operators now own the majority of the rails, this makes little sense. Our national freight rail system is hailed as the most efficient in the world and the envy of other countries. Mixing freight with passenger rail is unwise.

It is important to note that before the passage of ARRA, the US Federal Railroad Administration (FRA) served primarily as a regulator of freight railroads and a pass-through of other federal funds, and had not been a predominantly grant-making agency. Thus a regulator was given a \$10 Billion program to administer, when ARRA and appropriations were taken together.

The FRA's history shows clearly in its administration of the ARRA HSR program.

#### **MAGLEV ADVANTAGES**

For each of the preceding criticisms of the current approach, maglev provides an answer. Given the success of the Maglev Deployment Program in identifying projects that met the federal standards in TEA 21 and the decision to go with an Action Alternative, it would seem that Maglev would be on a path to receive ARRA funds. None of the maglev projects received even a dollar of the ARRA funds. Again, we must ask why?

Maglev has been in revenue service since 2004 and has demonstrated that:

- Maglev can achieve ultra high speeds in revenue service (270 MPH);
- Maglev's 99.9% on-time performance in commercial application is unmatched by any other transportation system in this country,
- Maglev can be self-sufficient as a result of lower Operations and Maintenance costs than traditional high speed rail,
- Maglev consumes less energy than traditional steel wheel on rail systems

- Maglev requires a smaller footprint than traditional steel wheel and when elevated can collocate in existing transportation Rights-Of-Way.

One only has to look at the FRA Record of Decision to see all the reasons that it was recommended to continue to construction of Maglev in this country. "...proceeding with the program also ensures that Maglev will be seriously considered in future high-speed ground transportation corridor planning to improve intercity and regional transportation. Implementing the Maglev Deployment Program could lead to faster trip times that would attract passengers off of congested highways and airports...Maglev affords the potential of more efficient energy use than air and auto modes of travel that require the direct consumption of petroleum for power...Compared to conventional modes of available travel in the United States and other high speed ground transport alternatives, Maglev has a greater combined benefit of faster trip times, reliability during peak demand, convenience, ability to share corridors, achieving high capacity, safety, and petroleum independence...(the projects selected) provide the highest probability of securing the non-federal resources..."

### CONCLUSIONS & RECOMMENDATIONS

The US Maglev Coalition believes that the Administration has missed an extraordinary – perhaps historic - opportunity to deploy maglev in the US by defining its HSR program as it has. Each of what we hoped would be the programs broader goals and objectives – bringing true HSR to the US and creating new industry – can be met with appropriate deployment of maglev. In addition, these goals and objectives can be met in a manner which preserves our environment, reduces our dependence on foreign oil – indeed, any oil – and can lead to a safer experience for the travelling public.

As the Congress develops legislation to reauthorize SAFETEA-LU, we hope that this Committee will keep the lessons learned from maglev experience around the world and here in the US in mind.

We ask that the Committee examine this testimony and the prior statutes cited here, and develop a framework – either by amendment to PRIIA or in new a program – which allows ALL HSGT modes to be fairly considered against criteria for funding and financing that meet key tests for speed, ridership, public-private partnering, environmental friendliness and energy efficiency.

Specifically, we recommend –

The creation of an office of high-speed passenger programs apart from freight rail regulation; or, if that is not possible in this budget environment, to augment FRA staff to more effectively implement HSGT programs and in a more timely fashion, especially in regions of the country that do not have FRA personnel on-site, where they are needed.

That modal administration silos based on funds be removed, and that the USDOT have flexibility to invest funds where a return-on-investment can actually be measured;

Further, that the Congress and the Administration encourage the states to adopt similar flexibility in their selection of transportation projects to fund, and to the extent possible, incentivize states with constitutional or statutory prohibitions against the use of state motor fuel taxes for rail and transit projects; i.e., other than highways and bridges;

That Congress require apples-to-apples comparisons by the USDOT and its modes and that these comparisons, rankings and evaluations be open and transparent to the public and its representatives. Life Cycle Cost analyses should be calculated on each project considered, so that the true long-term costs may be fairly calculated; and,

That Congress encourage the deployment of one or more maglev projects for commercial service such that maglev's attributes and any shortcomings may be fairly evaluated, as has been the case with so many other new technologies in the past. We encourage the Committee to create and fund an account for HSGT projects of national significance, to be awarded on a competitive basis judged against the criteria stated above. In this way we see the possibility that two or more truly transformational HSGT projects may be implemented.

We are convinced that maglev will be the technology of choice when judged against meaningful criteria that are required for successful public-private HSGT transportation systems.